

**POWER TOOLS: USING MUNICIPAL SETTING DESIGNATIONS
AND THE DRY CLEANER REMEDIATION PROGRAM
TO ADDRESS CONTAMINATED PROPERTY IN TEXAS**

JOHN SLAVICH

Guida, Slavich & Flores, P.C.
750 N. St. Paul Street, Suite 200
Dallas, Texas 75201
Slavich@gsfpc.com

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JOHN SLAVICH
Guida, Slavich & Flores, P.C.

750 N. St. Paul Street, Suite 200
Dallas, Texas 75201
Ph: 214.692.0009
Fax: 214.692.6610
E-mail: slavich@guidaslavichflores.com
Website: www.guidaslavichflores.com

John Slavich is a shareholder in the Dallas, Texas law firm of Guida, Slavich & Flores, P.C. Mr. Slavich has a diversified environmental law practice focusing on environmental issues arising in real estate, corporate, and commercial transactions. He devotes a substantial amount of his practice to working with parties to structure deals that can get environmentally-impacted properties cleaned up and back into productive use.

Mr. Slavich is a member of the City of Dallas Brownfields Forum and a past chairman of the Environmental Law Section of the Dallas Bar Association. He regularly lectures and writes on environmental law topics. His chapter on the Texas Voluntary Cleanup Program is included in *Brownfields: A Comprehensive Guide to Redeveloping Contaminated Property* (American Bar Association, 2002). Mr. Slavich is a member of the State Bar of Texas and received his law degree from Washington University School of Law, his master of business administration degree from Southern Methodist University, and his undergraduate degree from Earlham College. *Texas Monthly* magazine named him as a Texas Super Lawyer in their inaugural listing in 2003 and in each subsequent listing. He was also listed in *Chambers USA – Guide to America's Leading Business Lawyers* (2006) and *Guide to the World's Leading Environmental Lawyers* (Legal Media Group, 2005).

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POWER TOOLS: USING MUNICIPAL SETTING DESIGNATIONS AND THE DRY CLEANER REMEDIATION PROGRAM TO ADDRESS CONTAMINATED PROPERTY IN TEXAS¹

I. INTRODUCTION

Where a property is, or is suspected to be, impacted by environmental contamination, uncertainties regarding liability exposure, cleanup costs, potential disruption to business operations, and property valuation often create concerns for property owners, as well as potential purchasers, developers, lenders and others. Various “tools” have been developed to reduce these uncertainties associated with contaminated properties (commonly referred to as “brownfields”). The tools used for managing environmental loss exposures come in numerous forms, including risk-based cleanup standards, Federal and State programs offering protection from governmental liability, contractual risk allotment, environmental insurance, and deal structuring.

Two additional statutory tools were adopted for use in Texas by the State Legislature in 2003: Municipal Setting Designations (“MSDs”) and the Dry Cleaner Remediation Program (“DCRP”). These statutory programs utilize different approaches:

- a. An MSD can make it quicker and less costly to obtain regulatory closure from the Texas Commission on Environmental Quality (“TCEQ”) for a contaminated site.
- b. The DCRP shifts the obligation for cleanup of solvents from dry cleaning operations to the State of Texas, payable out of a State fund.

Compared with the existing remediation tools, the MSD and DCRP can be considered “power tools” since they can provide a mechanism for arriving at an exit strategy for a contaminated property more quickly and with more certainty and less cost. This paper considers how these tools can be of practical benefit both to current property owners and to purchasers, developers and lenders in connection with a transaction involving a brownfield property.

II. MUNICIPAL SETTING DESIGNATIONS – A NEW PARADIGM FOR REACHING REGULATORY CLOSURE

A. Background

The Municipal Setting Designation is not a stand-alone regulatory fix for a contaminated property. An MSD does not substitute for a Certificate of Completion (“COC”) under the Texas Voluntary

Cleanup Program (“VCP”) or a no further action determination under one of the other Texas remediation programs, such as TCEQ’s Corrective Action Program or Petroleum Storage Tank Program. Rather, it is intended to be used as a component part of the State’s regulatory closure process. Because the VCP is generally considered to be the regulatory closure program preferred by the real estate market, this paper will focus on how the MSD works in the context of the VCP.

1. MSD and VCP

The VCP is intended to provide incentive to remediate contaminated property by removing liability of future landowners and lenders.² When the necessary investigation and appropriate response actions with respect to a site have been completed and a COC is issued by TCEQ, future owners, operators, and lenders are released (subject to limited exceptions) from liability to the State of Texas with respect to cleanup of contamination present at the site covered by the COC at the time the COC was issued.³ Prospective purchasers of contaminated sites that become applicants under the VCP *prior to taking ownership of the property* will also be released from liability upon TCEQ’s subsequent issuance of a COC.⁴

2. Texas Risk Reduction Program

Texas Risk Reduction Program (“TRRP”) is TCEQ’s “cleanup cookbook” for Texas remediation projects. The detailed TRRP regulations,⁵ and extensive accompanying guidance issued by TCEQ, provide a comprehensive risk-based approach for assessing and responding to environmental contamination. TRRP requires persons addressing environmental contamination to perform a series of activities with respect to a site. Those activities include:

- a. Conducting an affected property assessment, classifying groundwater, determining land use, and notifying affected offsite property owners;
- b. Determining critical protective concentration levels for the affected environmental media (e.g., soil, groundwater, surface water) and potential exposure pathways (e.g. dermal exposure to soil, human ingestion of groundwater, ecological receptors);
- c. Preparing an Affected Property Assessment Report (“APAR”) which sets out in detail the information noted above, along with a significant amount of other site-related information called for by TRRP;

- d. Developing a Response Action Plan that describes how the proposed response objectives will be met; and
- e. Preparing and submitting to TCEQ following completion of response actions, a Response Action Completion Report.⁶

A complete delineation of the lateral and vertical extent of impacts to affected media above TRRP Protective Concentration Levels (“PCLs”) for “chemicals of concern” is generally required as part of the APAR. Typically the most stringent PCLs for contaminants in soil and groundwater are based directly or indirectly on Federal drinking water standards. Delineation will many times be the most costly and time-consuming component of the TRRP process.

The Legislature created the Municipal Setting Designation as a legislative amendment of the regulatory provisions established by TCEQ in their TRRP standards. It can provide particular relief from the factor typically responsible for the greatest amount of cost and time in addressing environmental impacts at a contaminated site – potential human consumption of contaminated groundwater – where conditions indicate that human consumption of affected groundwater cannot be reasonably anticipated. With an MSD, persons addressing impacted property may be subject to less stringent soil and groundwater assessment and cleanup requirements than would otherwise be required under TRRP.

B. The Municipal Setting Designation

H.B. 3152 (effective September 1, 2003)⁷ authorized the creation of MSDs in Chapter 361, Subchapter W of the Texas Solid Waste Disposal Act.⁸ As adopted, the statute required two criteria for eligibility:

- a. A public drinking water supply system exists which is capable of supplying drinking water to the MSD property and property within ½ mile of the MSD Property; and
- b. The property is within the corporate city limits or extraterritorial jurisdiction of a municipality with a population of at least 20,000.⁹

The second eligibility criteria was eliminated by H.B. 2018, which was passed by the 80th Legislature and signed by the Governor on May 25, 2007, allowing for wider utilization of MSDs in Texas.

An MSD is a specified geographic area that is certified by the TCEQ pursuant to an application by a property owner, municipality, or others. The boundaries of an MSD will usually be identical to the

boundaries of the property owned by the VCP applicant. However, in certain circumstances, an MSD can extend beyond the applicant's property and also cover adjacent properties. Generally such a multi-property MSD will require the authorization of the owners of the covered property. Note, however, that the City of Fort Worth is seeking an MSD covering approximately 2,000 acres in the Trinity Uptown section of the City without the prior written approval of property owners within the MSD boundaries. Additionally, the City of Beaumont has put in place an ordinance that condemned the groundwater in the City for potable use and that designates the City as an MSD.

Certification of an MSD affects TRRP standards by changing the applicable assessment and cleanup levels for soil and groundwater with respect to the MSD site. So long as groundwater contamination is not causing, nor is it reasonably anticipated to cause, offsite impacts to human health within a ½ mile buffer zone surrounding the MSD, then soil and groundwater assessment and cleanup levels based directly or indirectly on safe drinking water standards do not apply under TRRP. The determination of actual or potential exposure to contaminated groundwater is based on a survey of existing groundwater wells within the ½ mile buffer zone surrounding the MSD. Even if there are state-registered groundwater wells within the buffer zone surrounding the MSD property, if the groundwater contamination impacting the MSD property is not reasonably anticipated to impact these existing wells, the human ingestion pathway for groundwater will not be considered under TRRP. To justify elimination of the human ingestion risk factor, a City ordinance or deed restriction prohibiting potable use of affected groundwater within an MSD will be required.¹⁰

If no groundwater wells exist within the buffer zone, or if it can be shown that the contamination is not reasonably anticipated to impact any existing wells, the VCP applicant can eliminate the following PCLs for purposes of assessment and cleanup under TRRP:

- a. The groundwater PCLs for direct human ingestion of groundwater (^{GW}GW_{Ing}), and
- b. The soil PCLs for protection against leaching of contaminants from soils into groundwater at levels that would be unsafe for human ingestion (^{GW}Soil_{Ing}).

At sites where an MSD can eliminate the groundwater exposure pathway, the effect on assessment and cleanup standards can be dramatic. For example, at dry cleaner sites, the contaminant invariably will be the solvent used in dry cleaner operations. Historically, that solvent has been perchlorethylene, commonly known as perc. The

groundwater PCL, based on ingestion of perc, is 0.005 ppm.¹¹ That number will be considered the “critical” PCL and groundwater assessment and cleanup to that level would be required. By eliminating the ingestion pathway with an MSD, the critical PCL will no longer be the ingestion pathway but rather the inhalation pathway, of 330 ppm, which is a 66,000 times increase over the non-MSD critical PCL of 0.005 ppm.¹²

Also, although groundwater contamination may be the primary focus at a site, an MSD can also relax soil assessment requirements and reduce the amount of soil that must be removed or otherwise remediated to achieve regulatory closure. When an MSD removes the groundwater ingestion pathway, the critical PCL for soil will be based upon a combined ingestion, dermal and inhalation exposure level rather than a soil-to-groundwater protection level. For example, elimination of the ingestion PCL for perc, at a site with a source area under 0.5 acre can result in an increase in the critical PCL for soil from 0.05 mg/kg (^{GW}Soil_{Ing}) to 98 mg/kg (^{Tot}Soil_{Comb})¹³ for a residential site and 360 mg/kg (^{Tot}Soil_{Comb})¹⁴ for a commercial/industrial site.

In many cases, no offsite assessment and no remediation of groundwater will be necessary to achieve a Remedy A cleanup with an MSD. However, certification of an MSD does not eliminate all assessment and cleanup requirements under TRRP. While two of the groundwater-related exposure pathways (ingestion, and protection of groundwater from surface and subsurface soil contamination) are eliminated from the risk analysis under TRRP, there are three other groundwater pathways that must still be considered and either eliminated or addressed: inhalation of volatiles; discharge to subsurface water; and ecological protection.¹⁵ Similarly, an MSD does not eliminate all assessment and cleanup requirements for soil contamination. For these and other reasons discussed above, it is important that persons planning to use an MSD strategy to address contamination under TRRP conduct an initial screening investigation to evaluate whether an MSD can be used to meet all TRRP assessment and cleanup requirements.

C. The MSD Process

The MSD process is made up of a series of requirements at the municipal and state levels.

1. State MSD Requirements

The steps to obtain MSD certification for a site are defined in Subchapter W of the Texas Health & Safety Code.¹⁶ These steps include application and payment of a \$1,000 fee; notice of the application (mailed to affected municipalities, municipal and retail public water utilities, and registered water well owners); public comment period (60 days); staff

technical review (90 days); and certification by TCEQ.¹⁷

2. Municipal MSD Procedures

Before TCEQ may certify an MSD, the applicant must provide documentation evidencing that:

- a. The MSD application to TCEQ is accompanied by resolutions in support adopted by (i) the city council of the municipality in which the MSD is located and any other municipalities lying within the boundaries of the MSD and ½ mile buffer zone; and (ii) the governing body of each municipal and retail public utility having a groundwater supply well within 5 miles of the MSD; and
- b. The property for which an MSD is sought is subject to either:
 - (1) a municipal ordinance that prohibits the use of affected groundwater from beneath the property as potable water and that appropriately restricts other uses of and contact with that groundwater; or
 - (2) a restrictive covenant enforceable by the municipality in which the property is located that prohibits the use of designated groundwater from beneath the property as potable water and appropriately restricts other uses or contact with that groundwater. Restrictive covenants must be approved by municipal resolution.¹⁸

The first two MSDs were done in the City of Dallas on a “pilot project” basis. The City of Dallas subsequently adopted a procedural ordinance¹⁹ to standardize the processing of MSD applications. Other municipalities that have adopted MSD procedural ordinances as of May 2007 include Fort Worth, Grapevine, Grand Prairie, and Arlington.²⁰ As would be expected, the municipal MSD programs vary in their approach to application fees, notice requirements, public participation and paperwork required during and after related TCEQ determinations.

Whether the jurisdiction has adopted a procedural ordinance, or whether it would consider an application on a case-to-case basis, the challenge is to obtain a resolution in support of the MSD not only from the municipality in which the MSD is located, but also resolutions of support from municipalities and regulated public utilities within the specified distances from the site, which may not have the same interest in approving the MSD as the host municipality.

Consequently, the MSD is, at its heart, a political process, with accompanying environmental technical aspects, and it is imperative that the MSD applicant keep in mind that their project team will need to include professionals that can assist with the political and related legal issues, which are beyond what environmental consultants typically provide.

D. The Importance of MSDs to Real Estate Deals

MSDs offer the opportunity to take a new strategic approach at sites that require regulatory closure. The typical brownfield site may present a number of challenges:

- a. Performing a cleanup that is cost-effective within the context of the property value or cost of redevelopment;
- b. Dealing with uncertainty as to if and when the State will grant regulatory closure; or
- c. Dealing with situations where contamination sourced on the subject property has migrated offsite or where the source of the contamination is an upgradient site which cannot be controlled by the subject property.

In our firm's experience in dealing with those challenges on client's projects, the MSD provides a significant improvement in offering more certainty and finality to projects involving contaminated properties.

As noted earlier, an MSD strategy can eliminate the need to "chase the plume" of contamination, which would otherwise be required under TRRP. That is particularly useful in situations where the plume has migrated and impacted offsite properties.

Even though an MSD requires a municipal ordinance or deed restriction on groundwater, a closure utilizing an MSD qualifies as TRRP Remedy Standard A, so the MSD would not be considered to be an institutional control. TRRP Remedy Standard A closure criteria would allow the applicant to use a Self Implementation Notice ("*SIN*") under TRRP rules to achieve target cleanup levels, rather than having to submit a Response Action Plan that, unlike a *SIN*, will require State approval. That approach can save time in the remediation schedule, which can be critical to a developer.

A combined VCP/MSD approach can substitute for an Innocent Owner/Operator program ("*IOP*") strategy for a site. The certificate issued by TCEQ under their *IOP* program provides a release of liability from the State without addressing regulatory closure of the contamination. In contrast, an MSD/VCP approach can provide regulatory closure and also overcome the primary drawback of Innocent Owner Certificates ("*IOCs*") to real estate developers: the *IOC* does not run with the land.

MSDs can also address concerns regarding liability exposure for environmental conditions that may have impacted surrounding properties. MSDs can reduce the potential for tort exposure by demonstrating that levels that exceed TRRP published standards can be left in place and still be deemed protective of human health and the environment under TRRP. MSDs also offer a vehicle for the owners of impacted adjacent property to join with the MSD applicant and extend the boundaries of the MSD to cover that adjacent property.

The MSD process can provide comfort to lenders and environmental insurance underwriters for a brownfield site. It has been our firm's experience that lenders are willing to consider financing for a contaminated property, even though regulatory closure has not yet been obtained from TCEQ, where an MSD has been (or, in certain instances, is expected to be) obtained for a property. Also an MSD will be considered to lower the underwriting risks for writing an environmental liability policy covering a brownfield site.

Exhibit 1 is a TCEQ list of MSDs showing applications that have been filed and MSDs subsequently certified by TCEQ. By my informal calculation, the projected value of redevelopment projects made possible by the certified MSDs that Guida, Slavich & Flores has handled through May 2007 (approximately half of the MSDs certified to date by TCEQ) exceeds \$500 million. With the additional client properties we currently have in the pipeline for MSD certifications, that total number is expected to exceed \$2.5 billion in the near future. Those numbers, while admittedly estimates, shows the significant impact that the MSDs have had in the short time of their existence. MSDs provide an important tool for property owners needing an exit strategy for environmentally-impacted properties, and for purchasers and developers dealing with the challenges of redeveloping contaminated property.

III. THE DRY CLEANER REMEDIATION PROGRAM – HAVING THE STATE ADDRESS CONTAMINATION

A. Dry Cleaner Environmental Response Statute

The Dry Cleaner Environmental Response Statute ("*Dry Cleaner Statute*") was adopted by the 78th Legislature in 2003²¹ and later amended by the 79th Legislature in 2005.²² The statute is codified as Chapter 374 of the Texas Health & Safety Code.²³ The Dry Cleaner Statute provided for rules that, among other things, impose performance standards for dry cleaning facilities including mandatory facility retrofitting,²⁴ and provide for prompt and appropriate corrective action of releases from dry cleaning facilities.²⁵ Rules were promulgated by TCEQ and are set forth in 30 TAC Chapter 337.

The Dry Cleaner Statute established registration requirements, fees, performance standards and other operational regulations, and investigation and remediation (“*corrective action*”) requirements for dry cleaning facilities. The particular provisions of the Dry Cleaner Statute that this paper will address are outlined in Section 374.101, which created a State fund to pay for State-lead cleanup of dry cleaner-related contaminated sites. The fund is financed by dry cleaner registration fees and fees imposed on the purchase of dry cleaner solvent.²⁶

The Dry Cleaner Statute also imposed response requirements in the event of a release of dry cleaning solvent. These requirements include immediately containing and controlling a release, and release reporting requirements.²⁷

B. The Dry Cleaner Remediation Program

The portion of the Dry Cleaner Statute of particular interest to real estate investors and developers is the Dry Cleaner Remediation Program (“*DCRP*”). The DCRP provides for State-lead cleanup of site contamination from a retail dry cleaning establishment. The Dry Cleaner Statute provides that if a contaminated dry cleaning site has been “ranked” under Section 374.154, then the State of Texas may use money from the fund (up to \$5 million for that single site²⁸) for corrective action at the site.

1. DCRP Eligibility

There are three classes of “owners” eligible to apply for a site to be ranked.²⁹ The first class, an owner of a dry cleaning facility or drop station, can apply for site ranking, provided that for active facilities, the facility is registered and current on fees, the dry cleaning operations are in compliance with applicable performance standards at the time of the release, and the owner is not in arrears for other monies owed to the State.³⁰

The second class is the owner of the real property on which the dry cleaning facility or drop station is or was located, who is also eligible to apply for site ranking. A five-year ownership requirement was removed in the 2005 amendments to the Dry Cleaner Statute. Certain former owners of real property on which the facility or drop station is or was formerly located are also eligible to apply for site ranking and make up the third class.³¹

H.B. 3220 was passed by both the House and the Senate during the 80th Legislature, but as of the date of this paper, had not been signed by the Governor. The amendment to the DCRP statute would require the two latter classes of real property owners noted above to pay an annual registration fee of \$1,500 to participate in DCRP fund benefits. It would also subject the real property at which the State undertakes DCRP

corrective action to a lien if those registration fees have not been paid.

2. Site Ranking and Prioritization

In order for a site to be eligible for State cleanup under the DCRP, an eligible person must submit a ranking application.³² The DCRP application requires site specific information, including a receptor survey, a site map showing the location of dry cleaning equipment, and a sufficient number of environmental samples, including groundwater samples, to document that a release of dry cleaning solvents has occurred.³³

The State requires a \$5,000 per site deductible,³⁴ which can be met by a demonstration that the applicant has spent that much money in site investigation costs. TCEQ is to assign a rank for a site based on information contained in the ranking application.³⁵ Non-emergency sites are ranked in order of relative significance.³⁶ The ranking procedures are set forth in TCEQ’s rules.³⁷ Based on those procedures, TCEQ assigns a numerical score for the applying site. The ranking is considered by TCEQ to be a measure of the potential for the release to impact receptors. TCEQ is to assign ranking to a site within ninety (90) days of receiving a ranking application.³⁸

The State also makes a separate prioritization determination for ranked sites. That determination is to be made semi-annually.³⁹ TCEQ will consider factors in addition to a site’s ranking score,⁴⁰ such as the amount of money in the fund, and whether interim or immediate action may prove cost effective by reducing the future costs necessary for remediation of the site. The relative priority, among ranked sites, can change,⁴¹ particularly as new sites apply and are assigned a site ranking.

3. Corrective Action

The statute provides that TCEQ is responsible for corrective action at sites that have been ranked.⁴² “Corrective action” includes investigation, assessment and cleanup of affected soil, groundwater, and surface water, both onsite and offsite.⁴³ TCEQ can compel site access to perform corrective action; however, TCEQ has indicated that they prefer access be granted voluntarily.⁴⁴ TCEQ can compel owners or lessees of dry cleaning facilities to undertake corrective action under certain circumstances as long as requiring the owner or lessee to bear the responsibility would not prejudice another eligible person to have corrective action costs paid by the fund.⁴⁵

TCEQ can approve entities other than the State to perform site investigation and remediation. The third-party contractors currently under contract with TCEQ to address issues at ranked sites are Ecology & Environment, Inc. and Weston Solutions, Inc. Additionally, the statute allows TCEQ to use a cleanup

standard less stringent than those required by TRRP. To date, however, State policy has been not to utilize a less stringent cleanup standard. TCEQ representatives have also previously indicated to me that TCEQ does not plan to utilize Municipal Setting Designations in connection with DCRP cleanups.

4. DCRP and the VCP

TCEQ treats the DCRP as a corrective action alternative to the Voluntary Cleanup Program.

Although there is no statutory restriction on having a site addressed under both the DCRP and the VCP, TCEQ takes the position that an election between the two programs must be made. After a VCP site has been ranked in the DCRP, the applicant must decide within forty-five (45) days whether to remain in the VCP, or to withdraw the site from the VCP and let the State perform corrective action under the DCRP.⁴⁶

The following chart compares certain aspects of the two programs:

	<u>DCRP</u>	<u>VCP</u>
Who can apply?	“Eligible persons”	Anyone (subject to site eligibility)
Cost to apply	\$5,000 deductible	\$1,000 application fee
Who does work?	State contractors (State-lead program)	Applicant hires contractors
Other costs	None, but DCRP funds for a site are capped at \$5 million	Pay for corrective action; pay for State oversight
State confirmation of completion	No Further Action letter	Certificate of Completion
Protection	Eligible persons exempt from claims under State law for: (i) cost recovery (ii) enforcement of corrective action (with exceptions)	Release of liability to future owners and lenders

5. DCRP and Real Estate Deals

In a real estate deal involving an environmentally-impacted site, there are two important considerations: the status of regulatory closure for a site, and the impact of that status on potential investors and their lenders. Although, DCRP, on its face, presents a very attractive opportunity to have the State assume responsibility for dry cleaning contamination impacting a site, there are a number of potential downsides of the DCRP that should be considered for any site:

a. *Is the site impacted by contaminants of concern in addition to dry cleaning solvents from the dry cleaning facility?* DCRP is limited to addressing dry cleaning solvents from dry cleaning facilities.⁴⁷ Similar chlorinated solvent contamination will not be covered if that contamination is from a source other than a dry cleaning facility. Non-dry cleaning solvent constituents of concern need to be addressed under State programs other than the DCRP, such as the VCP.

b. *When will the State complete corrective action and issue a No Further Action letter?* Without regulatory closure in place, both financing and exit strategy for a site can be adversely impacted. Just because the State has undertaken the obligation to perform corrective action, there is no assurance that the necessary work can or will be done on a schedule that meets the needs of the site’s owner or potential purchasers.

c. *What will be the real estate implications of regulatory closure using a commercial/industrial standard?* TRPP utilizes a risk-based closure approach. Also, TRRP draws a distinction between regulatory closures where the anticipated use of the property is residential and where the anticipated use is commercial/industrial. The investigative and cleanup standards for the former use are more stringent than for the latter use. In performing corrective action at a dry cleaning site, TCEQ would not be expected to perform a clean up more stringent than that required under a commercial/industrial standard. Particularly where properties are being redeveloped and

repurposed, such as for mixed use, additional remediation of the site may need to be performed by the site owner to permit residential use at the site.

- d. *How will remediation strategy be impacted by TCEQ's position that a site cannot pursue remediation using both the DCRP and the VCP?* TCEQ limits a site from being in both the DCRP and the VCP simultaneously.⁴⁸ This limit on a dual-track remediation strategy is not required by statute and can present practical issues to a property owner or developer that wants to use a comprehensive regulatory closure approach for a site. Although a site owner whose property is ranked in the DCRP could, if necessary, drop out of the DCRP, do necessary work under the VCP and then re-enter the DCRP, the disconnect between the two programs can create issues. Work performed under the DCRP that is considered "remediation" for purposes of the VCP, can bar entry of that site into the VCP. Remediation will make the site ineligible for the VCP.⁴⁹ Also, TCEQ guidance regarding the DCRP indicates that once the State spends remediation money on a site, the site cannot withdraw from the DCRP and be entered into the VCP.⁵⁰

IV. ADDITIONAL MATERIALS

TCEQ's website has various additional informational materials on both of the programs discussed in this paper. With regard to MSDs, see <http://www.tceq.state.tx.us/remediation/msd.html>.

With regard to the DCRP, see http://www.tceq.state.tx.us/remediation/dry_cleaners/.

Each of the TCEQ web pages has various materials available for downloading. Copies of the current versions of relevant web pages are included as Exhibits 3 and 4 to this paper.

Other materials regarding MSDs that provide helpful background are Kathryn A. Hansen, *Municipal Setting Designations, The Ever Lovin' Blue-Eyed Thing (A Municipality's Perspective)*, 17th Annual Texas Environmental Superconference (August 2005); and David E. Whitten, *Municipal Setting Designations. The Real Estate Community Perspective*, 17th Annual Texas Environmental Superconference (August 2005).

V. CONCLUSION

MSDs and the DCRP offer new opportunities to address environmental issues that can otherwise present a roadblock for real estate transactions. As with all such transactions, the real estate practitioner is well advised to keep in mind the following big picture items:

1. Begin with the end in mind and develop a strategy to coordinate with your plan.

A critical component of the project planning process is an information baseline derived from an environmental investigation. The scope of the investigation should be prepared with the assistance of experienced professionals and with the development plans in mind. That baseline and the development plans should be used to select the appropriate remediation tools and to develop a strategic approach. The strategic approach selected to address environmental issues should take into account the proposed use for the property and regulatory standards, especially the cleanup targets, the project will need to meet. Above all, the approach needs to factor the client's exit plans into the analysis.

2. Enlist the assistance of professionals with expertise and experience.

Because of the complexities that can arise in development of a brownfield property, the developer is well advised to supplement the real estate/development/construction team with additional expertise. Usually that will include an environmental attorney, an environmental consultant, and remediation contractors. There may also be a need to include an environmental insurance broker, and community relations and governmental affairs liaisons. The coordination between and among the different disciplines is crucial for a successful project. Those additional professionals should be brought in at the earliest stages of the project and the team will need to closely coordinate their efforts throughout the project.

Where contaminated property is involved and remediation is recommended, if not mandatory, practitioners need to take advantage of remediation tools that are appropriate for the situation presented. MSDs and the DCRP are two of the tools that may prove useful under the right circumstances, but practitioners should not lose sight of the fact that there are additional remediation tools that were not discussed in this paper, but that also may merit consideration.

These tools, when used strategically, can provide sufficient comfort for sellers, buyers, and lenders so that deals involving the acquisition and redevelopment of brownfield properties can proceed and those properties can be remediated and returned to productive use.

VI. ENDNOTES

¹ Portions of this paper have appeared in other forms previously. The MSD section in particular draws on work done by my colleagues Greg Rogers and David Whitten, who, along with Erika Erikson, have been instrumental in developing the MSD process in connection with implementing MSDs for our firm's client. Also, Ms. Erikson assisted with research for the paper and the preparation of the Endnotes.

² TEX. HEALTH & SAFETY CODE § 361.602 (visited May 23, 2007) <http://tlo2.tlc.state.tx.us/statutes/docs/HS/content/pdf/hs.005.00.000361.00.pdf>.

³ *Id.* § 361.610.

⁴ *Id.*

⁵ 30 TEX. ADMIN. CODE § 350.001 *et seq.* (visited May 23, 2007) <http://www.tceq.state.tx.us/rules/indxpdf.html#350>.

⁶ *Id.* § 350.3.

⁷ Tex. H.B. 3152, 78th Leg., R.S. (2003).

⁸ TEX. HEALTH & SAFETY CODE § 361.801 *et seq.*

⁹ *Id.* § 361.803

¹⁰ *Id.* § 361.8065(a)(2).

¹¹ Table 3, Tier 1 Groundwater PCLs – Residential and Commercial/Industrial, updated Apr. 20, 2007 (visited May 23, 2007) http://www.tceq.state.tx.us/assets/public/remediation/trrp/TRRPPCLTables1_5_042007.xls.

¹² *Id.*

¹³ Table 1, Tier 1 Residential Soil PCLs, updated Apr. 20, 2007 (visited May 23, 2007) http://www.tceq.state.tx.us/assets/public/remediation/trrp/TRRPPCLTables1_5_042007.xls.

¹⁴ Table 2, Tier 1 Commercial/Industrial Soil PCLs, updated Apr. 20, 2007 (visited May 23, 2007) http://www.tceq.state.tx.us/assets/public/remediation/trrp/TRRPPCLTables1_5_042007.xls.

¹⁵ TEX. HEALTH & SAFETY CODE § 361.808(f).

¹⁶ *Id.* § 361.801 *et. seq.*

¹⁷ *Id.* § 361.804.

¹⁸ *Id.* § 361.8065.

¹⁹ Dallas, Tex., Ordinance 262001, May 25, 2005 (visited May 24, 2007) <http://www.dallascityhall.com/pdf/DevSvcs/MSDOrdinance.pdf>.

²⁰ Fort Worth, Tex., Ordinance to Add Municipal Setting Designations to Chapter 12.5 Environmental Protection and Compliance, January 11, 2005 (visited May 29, 2007) http://www.fortworthgov.org/uploadedFiles/Department_of_Environmental_Management/About_Us/Brownfields/MSD_ordinance.pdf; Grapevine, Tex., Ordinance 2005-79, codified in Chapter 25, Article VII, Oct. 11, 2005, (visited May 29, 2007) <http://www.municode.com/resources/gateway.asp?pid=10855&sid=43>; Grand Prairie, Tex., Ordinance to Add Municipal Setting Designations, codified in Chapter 13, Article XVIII, Jan. 3, 2006, (visited May 29, 2007) <http://www.municode.com/resources/gateway.asp?sid=43&pid=10142>; Arlington, Tex., Ordinance 06-089, Aug. 22, 2006 (visited May 29, 2007) http://www.ci.arlington.tx.us/environmentalservices/pdf/ordinances_MunicipalSettingDesignation.pdf.

²¹ Tex. H.B. 1366, 78th Leg., R.S. (2003).

²² Tex. H.B. 2376 and S.B. 444, 79th Leg., (2005).

²³ TEX. HEALTH & SAFETY CODE § 374.001 *et seq.* (visited May 21, 2007) <http://tlo2.tlc.state.tx.us/statutes/docs/HS/content/pdf/hs.005.00.000374.00.pdf>.

²⁴ *Id.* § 374.052.

²⁵ *Id.* § 374.051(a)(2).

²⁶ *Id.* § 374.101.

²⁷ *Id.* § 374.151(b).

²⁸ *Id.* § 374.203.

²⁹ *Id.* § 374.154(b) and § 374.203.

³⁰ 30 TEX. ADMIN. CODE § 337.32 (visited May 21, 2007) <http://www.tceq.state.tx.us/rules/indxpathdf.html#337>.

³¹ TEX. HEALTH & SAFETY CODE § 374.154(b)(3).

³² *Id.* § 374.203(c).

³³ *TCEQ Dry Cleaner Remediation Program Application for Ranking*, Texas Commission on Environmental Quality, App. A (visited May 21, 2007) http://www.tceq.state.tx.us/remediation/dry_cleaners/forms.html.

³⁴ TEX. HEALTH & SAFETY CODE § 374.203(d).

³⁵ *Id.* § 374.154.

³⁶ *Id.* § 374.154(a).

³⁷ 30 TEX. ADMIN. CODE § 337.31 (visited May 21, 2007) <http://www.tceq.state.tx.us/rules/indxpathdf.html#337>.

³⁸ TEX. HEALTH & SAFETY CODE § 374.154(f).

³⁹ *Id.* § 337.30(a).

⁴⁰ *Id.* § 337.30(b).

⁴¹ *Id.* § 337.30(c).

⁴² TEX. HEALTH & SAFETY CODE § 374.055.

⁴³ *Id.* § 374.153.

⁴⁴ *Answers to Your Questions about the Dry Cleaner Remediation Program*, Texas Commission on Environmental Quality, Question A4, (revised August 9, 2006).

⁴⁵ TEX. HEALTH & SAFETY CODE § 374.202

⁴⁶ *Answers to Your Questions about the Dry Cleaner Remediation Program*, Question C1.

⁴⁷ TEX. HEALTH & SAFETY CODE § 374.208(b).

⁴⁸ *Answers to Your Questions about the Dry Cleaner Remediation Program*, Question C1.

⁴⁹ *See Id.* Question C4 and *Voluntary Cleanup Program Rules* 30 TEX. ADMIN. CODE § 333.6 (visited May 21, 2007) <http://www.tceq.state.tx.us/assets/public/legal/rules/rules/pdflib/333a.pdf>.

⁵⁰ *Answers to Your Questions about the Dry Cleaner Remediation Program*, Question C1.

This material represents a summary of the topics discussed and is not intended as legal advice. Readers should not act upon the information discussed in this material without consulting an attorney. This material was prepared in May 2007. Readers should verify that the material is still current and applicable at the time it is read.

Texas Municipal Setting Designations

PMSD APP #	Applicant	MSD City	MSD Address	Maps (large files 15MB)	IC Form	Desig. GW (ft bgs)	Size (acres)	Rec'd Date	Status	Certified Date	Certificate #
MSD AP 001	Carter Investment Co.	Houston		map	---	---	---	09/06/03	Denied ¹		N/A
MSD AP 002	Goodwill Industries, Inc	Dallas	2800 N. Hampton Rd.	map	ORD	0-50	9.5	02/23/04	Certified	10/11/04	MSD001
MSD AP 003	Brownfield Stewardship Fund	Dallas	2306 Motor St.	map	ORD	0-50	4.2	02/27/04	Certified	10/11/04	MSD002
MSD AP 004	Atrium Companies, Inc	Irving	2101 E. Union Bower Rd.	map	---	0-50	7.7	08/12/04	Withdrawn		N/A
MSD AP 005	Kansas City Southern	Port Arthur	237 W. 9 th St.	map	ORD	0-50	6.2	01/18/05	Certified	03/22/05	MSD003
MSD AP 006	GPI Interim, Inc	Irving	1801 Hurd Dr.	map	ORD	0-50	5.2	02/18/05	Certified	02/17/06	MSD007
MSD AP 007	Neches St. Properties, LLC	Beaumont	1110 Neches St.	map	ORD	0-40	2.7	02/28/05	Certified	12/16/05	MSD006
MSD AP 008	Kimco Montgomery Ward Plaza	Fort Worth	2600 W. 7 th St	map	ORD	<20	46.2	06/17/05	Certified	8/31/05	MSD004
MSD AP 009	City of Garland	Garland	1500 E. Hwy 66	map	ORD	<30	142	06/28/05	Certified	03/06/06	MSD008
MSD AP 010	Brownfield Stewardship Fund	Dallas	3200 Ross Ave	map	ORD	---	1.46	10/05/05	Certified	12/16/05	MSD005
MSD AP 011	Former Rental Service Corporation #440	Beaumont	4740 Washington Blvd.	map	---	0-50	1.377	12/07/05	Pending		

Texas Municipal Setting Designations

PMSD APP #	Applicant	MSD City	MSD Address	Maps (large files 15MB)	IC Form	Desig. GW (ft bgs)	Size (acres)	Rec'd Date	Status	Certified Date	Certificate #
MSDAPP012	Block 588 Condominium Development, LP	Dallas	3110 Thomas Avenue	map	ORD	<30	1.9	1/13/06	Certified	05/19/06	MSD011
MSDAPP013	GPI Interim, Inc	Euless	1205 Texas Star, 1103-1109 South Airport Circle, 1101 Pamela Dr	map		0-50	3.83	2/10/06	Certified	02/07/2007	MSD024
MSDAPP014	Crow- Billingsley #17, Ltd	Dallas	Floura at Routh Streets	map	ORD		10.5	2/21/06	Certified	05/19/06	MSD014
MSDAPP015	Perry Homes a Joint Venture	Dallas	5914, 5930, 6008 Maple Ave	map	ORD	20-45	7	2/21/06	Certified	05/12/06	MSD010
MSDAPP016	Cityville at Lemmon, LP	Dallas	5110-5130 Lemmon Ave	map	ORD	3-40	1	2/22/06	Certified	05/19/06	MSD015
MSDAPP017	Gerdau Ameristeel Beaumont Wire Operations	Beaumont	220 Avenue A	map		2-28	12	3/06/06	Certified	12/11/2006	MSD019
MSDAPP018	Prescott Interests, Ltd.	Dallas	6200 Denton Dr.	map	ORD	0-50	5	3/08/06	Certified	05/19/06	MSD012
MSDAPP019	Prescott Interests, Ltd.	Dallas	6262 Cedar Springs	map	ORD	20-40	2	3/08/06	Certified	05/19/06	MSD013
MSDAPP020	Ohmstede, Ltd	Beaumont	895 North Main Street	map	ORD	0-45	14	3/16/06	Certified	05/19/06	MSD009
MSDAPP021	American Valve & Hydrant	Beaumont	3265 Hollywood	map		0-20	1	06/28/06	Certified	1/22/2007	MSD023
MSDAPP022	DTX Associates	Fort Worth	6612 Brentwood Stair Rd	map		0-35	1	8/4/2006	Certified	11/28/2006	MSD018
MSDAPP023	Bank of the West	Grapevine	108 W. Northwest Highway	map	ORD	10-35	4.5	8/31/2006	Certified	11/01/06	MSD017

Texas Municipal Setting Designations

PMSD APP #	Applicant	MSD City	MSD Address	Maps (large files 15MB)	IC Form	Desig. GW (ft bgs)	Size (acres)	Rec'd Date	Status	Certified Date	Certificate #
MSDAPP024	Greenway-Gaston, LLC	Dallas	4105-4204 Gaston, 916 N Haskell, 4122 Swiss Ave	map	Ord	0-60	6.5	9/19/2006	Certified	10/24/06	MSD016
MSDAPP025	16 th Ave. Holdings and Harcross Chemicals	Dallas	4900 Singleton; 2520, 2627 Weir	map	Ord	0-23	47	10/11/06	Certified	12/15/2006	MSD021
MSDAPP026	Woodall United Investors, Inc.	Dallas	704 N Griffin St.	map	Ord	0-28	2	10/12/06	Certified	12/19/2006	MSD020
MSDAPP027	Acme Brick	Fort Worth	2700-2800 W 7 th Street Area	map	Ord	0-16	20	10/16/06	Certified	1/19/2007	MSD022
MSDAPP028	Baylor Health Care Systems	Dallas	Bounded by Texas St., Live Oak St., Adair St. & Swiss Ave.	map	Ord	10 - 70	41	11/1/06	Certified	03/12/2007	MSD025
MSDAPP029	BLG Northside Development, L.P.	Fort Worth	600 North Main Street	map	Ord	10-50	71	12/6/2006	Certified	03/12/2007	MSD026
MSDAPP30	Houston Street Acquisitions L.P.	Fort Worth	505 N. Houston Street	map	Ord	0-20	1.6 acres	12/29/2006	Pending		
MSDAPP031	Blackburn Central Holdings, Inc.	Dallas	3601 and 3605 McKinney and 3128 East Lemmon Ave.	map	Ord	15-30	0.75	1/25/2007	Pending		
MSDAPP032	Austin International Ventures	Dallas	900 -1226 Singleton Blvd., 905 and 1300 Duluth and 2625 Bolger.	map	Ord	6-20	45.5	1/25/2007	Pending		
MSDAPP033	QuikTrip	Duncanville	102 East Camp Wisdom Road.	map	RC (Not prep)	0-16	1.4	2/20/2007	Pending		

Texas Municipal Setting Designations

PMSD APP #	Applicant	MSD City	MSD Address	Maps (large files 15MB)	IC Form	Desig. GW (ft bgs)	Size (acres)	Rec'd Date	Status	Certified Date	Certificate #
					ared)						
MSDAPP034	Redwood Cedar, LLC	Dallas	4123 Cedar Springs	map	Ord	20-40	3	2/20/2007	Pending		
MSDAPP035	Arbor Woods Development LLC	Dallas	3030 N. Hampton Rd.	map	Ord	15-20	9.6	2/20/2007	Pending		
MSDAPP036	Spirit Master Funding III, LLC	Dallas	8401 Ambassador Rd.	map	Ord	7-50	7.25	3/5/2007	Pending		

Map of MSD sites in Tarrant and Dallas counties

Map of MSD sites in Southeast Texas

IC - institutional control; Desig. GW - designated groundwater; ft bgs - feet below ground surface; ORD - ordinance; RC- restrictive covenant;
Res - resolution

1. No city support, 2. Awaiting IC, 3. Awaiting additional information

DCRP Prioritization List April 18, 2007 Page 1 of 3								
DCRP App. #	Site Name	Site Address	City	RN	Site Status	Rank Score	Priority	Contaminant Type
4	Inwood Shopping Center	8193 Antoine Dr	Houston	101053981	Remediation	410	1	Chlorinated Solvent
33	Parkway Central Shopping Center	839 East Lamar Blvd	Arlington	104059290	Assessment	445	2	Chlorinated Solvent
39	Boss Cleaners	4001 West Green Oaks	Arlington	103953550	Assessment	435	3	Chlorinated Solvent
30	Val-U Cleaners	1112 North Fielder Rd	Arlington	103967378	Assessment	460	4	Chlorinated Solvent
29	Town & Country Dry Cleaners	630 South Main St	Grapevine	104364856	Assessment	375	5	Chlorinated Solvent
34	Posh Cleaners	10031 Marsh Lane	Dallas	100802891	Assessment	370	6	Chlorinated Solvent
52	Fmr Woodforest Foodmart	388 Uvalde Rd	Houston	101739621	Assessment	370	7	Chlorinated Solvent
19	Jack Brown / One Price	13058 Research Blvd	Austin	102845302	Assessment	390	8	Chlorinated Solvent
98	Cypress Station Shopping Center	217 FM 1960	Houston	102330636	Pre-Assess	430	9	Chlorinated Solvent
97	Former American Cleaners	309-311 West 5th St	Austin	100698174	Pre-Assess	430	9	Chlorinated Solvent
16	Northgate Shopping Center	2200 FM 1960	Houston	101474922	Assessment	380	11	Chlorinated Solvent
10	Memorial Village Dry Cleaners	949 Bunker Hill	Houston	100555507	Assessment	420	12	Chlorinated Solvent
7	Comet Cleaners	4300 Matlock, Suite 108	Arlington	102212578	Remediation	420	13	Chlorinated Solvent
57	Greens Imperial Center	17571 Imperial Valley Dr	Houston	100712173	Assessment	415	14	Chlorinated Solvent
6	Hi-Tech Cleaners	6805 Main St	The Colony	104017926	Assessment	415	15	Chlorinated Solvent
12	Fmr Pioneer Cleaners	7140 Parker Rd	Houston	104063706	Assessment	365	16	Chlorinated Solvent
64	Former Star Cleaners	6763 Highway 6 South	Houston	104212832	Assessment	325	17	Chlorinated Solvent
54	A-1 Dry Cleaners	4200 Alameda	Corpus Christi	102360476	Assessment	405	18	Chlorinated Solvent
20	Corrigan's Properties	4222 Oak Lawn	Dallas	101055325	Assessment	405	18	Chlorinated Solvent
58	Cypress Creek Cleaners	12275 Grant Rd	Cypress	103964896	Assessment	400	20	Chlorinated Solvent
60	Good Neighbor Cleaners	6410 Cavalcade St	Houston	103952255	Assessment	400	20	Chlorinated Solvent
62	Former Continental Cleaners	3333 W. Camp Wisdom Rd	Dallas	101644896	Assessment	315	22	Chlorinated Solvent
43	Eastgate One Hour Martinizing	4525 Saturn Rd	Garland	102926250	Assessment	355	23	Chlorinated Solvent
31	Jefferson Cleaners	1901 Jefferson Dr	Port Arthur	103958732	Assessment	350	24	Chlorinated Solvent
1	Fmr Hallmark Cleaners	4201 San Felipe	Houston	102173358	Assessment	385	25	Chlorinated Solvent
85	La Rose Dry Cleaners	3933 BRdway	Houston	100654425	Assessment	385	26	Chlorinated Solvent
94	Walnut One Hour Cleaners	2947 Walnut Hill Lane	Dallas	100692664	Pre-Assess	385	27	Chlorinated Solvent
42	Country Club Cleaners	2901 Valley View	Dallas	102964194	Assessment	340	28	Chlorinated Solvent
80	Former Glo Cleaners	2815 Live Oak St	Dallas	100931419	Pre-Assess	335	29	Chlorinated Solvent
69	Former Dry Cleaner Site	614 Elizabeth St	Corpus Christi	104954581	Pre-Assess	335	29	Chlorinated Solvent
50	Randalls Center - Bay Area	3100 FM 528	Friendswood	101054880	Assessment	365	31	Chlorinated Solvent
103	\$1.25 Dry Cleaner Super Center	6327 N. Eldridge Parkway	Houston	104188693	Pre-Assess	365	31	Chlorinated Solvent
71	Bay Plaza	2348 N. Alexander Dr.,	Baytown	102616869	Assessment	365	33	Chlorinated Solvent
55	Sulfur Springs Shopping Center	1402 Mockingbird Lane	Sulfur Springs	104535711	Assessment	365	33	Chlorinated Solvent
53	Bell Cleaners - Midway	9215 Midway Rd	Dallas	102164357	Assessment	365	35	Chlorinated Solvent
48	Barkers Comet Cleaners	676 SW Wilshire Blvd	Burleson	101467082	Assessment	360	35	Chlorinated Solvent
24	Beechnut Centre one	10828 Beechnut St	Houston	102085610	Assessment	360	37	Chlorinated Solvent
61	Premium Cleaners	2217 Marsh Lane	Carrollton	104090006	Assessment	355	38	Chlorinated Solvent
23	Grogans Center One	502 Sawdust	Houston	101053668	Assessment	355	39	Chlorinated Solvent

DCRP Prioritization List April 18, 2007 Page 2 of 3								
DCRP App. #	Site Name	Site Address	City	RN	Site Status	Rank Score	Priority	Contaminant Type
36	Former Collins St Cleaners	2131 North Collins	Arlington	100635291	Assessment	355	39	Chlorinated Solvent
114	Crystal Cleaners	6237 Westheimer	Houston	100889732	Pre-Assess	355	39	Chlorinated Solvent
11	City Cleaners	2400 Cartwright	Missouri City	104538566	Assessment	390	42	Chlorinated Solvent
68	Comet Cleaners - Mid Cities	6723 Mid Cities Blvd	N Richland Hills	102213956	Assessment	350	43	Chlorinated Solvent
28	Nifty Cleaners	7555 Long Point	Houston	104085683	Assessment	350	44	Chlorinated Solvent
95	Summit Cleaners	3738 Westheimer Rd	Houston	104097712	Pre-Assess	350	44	Chlorinated Solvent
77	Rick's Cleaners	7301 Burnet Rd	Austin	101445583	Pre-Assess	350	46	Chlorinated Solvent
14	Quality Cleaners	18110 Midland	Dallas	102753597	Assessment	345	47	Chlorinated Solvent
59	Village Creek Shopping Center	6150 Independence Pkwy	Plano	100652643	Assessment	345	48	Chlorinated Solvent
108	Image Cleaners	3407 Montrose Ave	Houston	100863091	Assessment	345	49	Chlorinated Solvent
67	Former Cottage Cleaners	2636 Frankfort Rd	Dallas	104009402	Assessment	345	49	Chlorinated Solvent
79	Former Crescent Cleaners	2604 Sunset Blvd	Houston	100576891	Assessment	340	51	Chlorinated Solvent
89	Quail Valley Cleaners	1300 Turtle Creek Dr	Missouri City	100614197	Pre-Assess	335	52	Chlorinated Solvent
84	Former Carrollton Cleaners	1108 N. Josey Ln.	Carrollton	105008726	Assessment	335	53	Chlorinated Solvent
26	Brothers II Cleaners	3939 Boat Club Rd	Lake Worth	100687896	Remediation	330	54	Chlorinated Solvent
37	Beltline Venture Shopping Center	2717 East Beltline	Dallas	101056257	Assessment	330	55	Chlorinated Solvent
45	Former Town & Country Cleaner	9625 Plano Rd	Dallas	103984571	Assessment	330	56	Chlorinated Solvent
40	Custom Cleaners	4517 Garth Rd	Baytown	104062609	Assessment	330	56	Chlorinated Solvent
65	Natchez Properties - Fmr Globe La	1111 Studewood	Houston	104916325	Assessment	285	58	Chlorinated Solvent
100	Fast Quality Cleaners	1544 S. Buckner Blvd	Dallas	100685155	Pre-Assess	325	58	Chlorinated Solvent
41	ZIP Cleaners	61 North Gilmer St	Killeen	103957460	Assessment	325	60	Chlorinated Solvent
3	Sparky's Cleaners	905 Center St	Deer Park	102866027	Assessment	325	61	Chlorinated Solvent
74	Former Nesbit Cleaners	15818 Champion Forest Dr	Spring	100697895	Assessment	325	62	Chlorinated Solvent
15	Oak Village Cleaners	10082 Long Point	Houston	104560032	Assessment	320	62	Chlorinated Solvent
63	Blue Ribbon Cleaners and Laundry	102 North Cedar Ridge Dr	Duncanville	100802305	Assessment	320	64	Chlorinated Solvent
106	1634 Westheimer	1634 Westheimer	Houston	101052827	Assessment	295	65	Chlorinated Solvent
72	USA Cleaners	7808 Spring Valley	Dallas	102862687	Assessment	310	66	Chlorinated Solvent
17	Westgate Shopping Center -Former	254 South Pioneer Dr	Abilene	101460889	Assessment	310	67	Chlorinated Solvent
47	Baumgart Family Cleaners	2216 Long Prairie Rd	Flower Mound	102337342	Assessment	310	67	Chlorinated Solvent
73	AB Cleaners	3695 Highway 6 South	Sugar Land	100605005	Pre-Assess	305	69	Chlorinated Solvent
25	Pride Cleaners & laundry	2204 W. Nolana, Suite C	McAllen	100701556	Assessment	305	69	Chlorinated Solvent
82	A Cleaners Laundry	1231 E. Pleasant Run Rd	DeSoto	104154141	Pre-Assess	305	71	Chlorinated Solvent
90	Bestway Cleaners	612 W. University Dr	Denton	104329040	Assessment	300	72	Chlorinated Solvent
66	Former Decent Cleaners	13050 Coit Rd	Dallas	102950938	Assessment	255	73	Chlorinated Solvent
5	SA Five Star Dry Cleaners	2414 Babcock Rd	San Antonio	102951209	Assessment	290	74	Chlorinated Solvent
8	Jack Brown Balcones Woods	5114 Balcones Woods	Austin	101474476	Assessment	290	74	Chlorinated Solvent
87	Former Model Industries	314 West Elizabeth St	Brownsville	102332723	Assessment	285	76	Chlorinated Solvent
27	Wyman One Hour	3720 Call Field Rd	Wichita Falls	104618020	Assessment	280	77	Chlorinated Solvent
96	Park Cleaners	13817 Cypress N Houston	Cypress	100560887	Pre-Assess	275	78	Chlorinated Solvent

DCRP Prioritization List April 18, 2007 Page 3 of 3								
DCRP App. #	Site Name	Site Address	City	RN	Site Status	Rank Score	Priority	Contaminant Type
38	Park Place Plaza	2501 South Texas Ave	College Station	101056950	Assessment	270	79	Chlorinated Solvent
70	Prestige Fabricare	8201 Quaker Ave	Lubbock	102951167	Assessment	270	80	Chlorinated Solvent
13	Comet 1-Hour Cleaners	2107 D Pioneer	Arlington	104560032	Assessment	265	81	Chlorinated Solvent
99	Quality Dry Cleaners - Silver Sage	4610 Western Center Blvd	Haltom City	102150471	Pre-Assess	265	82	Chlorinated Solvent
56	Adrians Cleaners	5800 Camp Bowie Blvd	Fort Worth	100556471	Assessment	260	83	Chlorinated Solvent
22	Ryan's Express Houston	480 Uvalde	Houston	101485647	Assessment	250	84	Chlorinated Solvent
81	Bellaire \$1.75 Cleaners	4603 Garth Rd	Baytown	104095971	Assessment	245	85	Chlorinated Solvent
32	Village Custom Cleaners	4409 Colleyville Blvd	Colleyville	104009386	Assessment	245	86	Chlorinated Solvent
21	Ryan's Express Cleaners	216 N. Bender	Humble	103960035	Assessment	245	86	Chlorinated Solvent
88	Jack Brown Cleaners #5	3415 Northland Dr	Austin	103974564	Assessment	245	86	Chlorinated Solvent
46	Lone Star Cleaners	14999 Beltline Rd	Dallas	101467884	Assessment	240	89	Chlorinated Solvent
2	Cooks Cleaners	1100 Third St	Rosenberg	104171327	Assessment	235	90	Chlorinated Solvent
86	Joyce Cleaners	2503 Valley View Lane	Farmers Branch	100780246	Assessment	235	91	Chlorinated Solvent
78	Pilgrim Cleaners	12442 Memorial Dr	Houston	100659812	Assessment	230	92	Chlorinated Solvent
102	North Junction Plaza	124-156 FM 1960 Rd	Houston	101151215	Assessment	255	93	Chlorinated Solvent
75	Former XL Cleaners	900 Polk St Suite 136	DeSoto	104981352	Pre-Assess	220	94	Chlorinated Solvent
18	Woodway Augusta Plaza	5773 Woodway	Houston	102319886	Assessment	185	95	Chlorinated Solvent
49	Dixon Cleaners	6300 Samuell Blvd.	Dallas	103970786	Assessment	175	96	Chlorinated Solvent
51	Classic Cleaners	5555 Preston Oaks	Dallas	104802533	Assessment	140	97	Chlorinated Solvent
35	Glo Dry Cleaners	4111 Gaston Ave	Dallas	102862349	Withdrawn	Site has withdrawn from DCRP		Chlorinated Solvent
44	Fmr Kwik Wash Laundry	515 N. Carroll Ave	Dallas	102645306	Assessment	Site determined to be ineligible		Chlorinated Solvent

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY****SITE SEARCH:**

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Municipal Setting Designations

An MSD is an official state designation given to property within a municipality or its extraterritorial jurisdiction that certifies that designated groundwater at the property is not used as potable water, and is prohibited from future use as potable water because that groundwater is contaminated in excess of the applicable potable-water protective concentration level. The prohibition must be in the form of a city ordinance, or a restrictive covenant that is enforceable by the city and filed in the property records.

Authorizing Legislation

[House Bill 3152](#), 78th Legislature, effective September 1, 2003

Statute

[Chapter 361, Texas Health and Safety Code, §§361.801-808](#)

Regulations

Draft rules were taken to the August 11, 2004 Commissioner's agenda for consideration for formal proposal. At the agenda, the decision was made to remand the draft rule.

Statutory Notification Requirements

Refer to this information on [Statutory Notification Requirements for the Municipal Settings Designation Program](#).

Application Status

Check here for the status of [submitted applications](#).

MSD Application Form

The [MSD application form](#) is available for download in portable document format (PDF). You can complete the application form electronically in Adobe Acrobat or Acrobat Reader by mouse-clicking the applicable yes/no "radio buttons," mouse-clicking boxes in the form to "checkmark" them, and by typing in the requested information as applicable. Please follow the directions offered in the form to guide the completion and submission of

the application form. Contact the Remediation Division at 512-239-2200 if you have questions.

MSD Guide for Cities

The TCEQ has published this Guide for Cities (RG-326) to introduce MSDs to city governments. This helpful information can also be used by potential applicants when approaching cities regarding a proposed MSD.

Contemplating an MSD?

If you are contemplating an MSD, here are some simple factors to consider:

- Have you verified the property meets the eligibility criteria [THSC §361.803]?
- Assess the likely assessment and remediation flexibility from the MSD:
 - What is the density of potable wells within ½ mile of MSD boundary? Will assessment and remediation efforts be significantly different from what would be required without an MSD?
 - What are the other likely groundwater exposure pathway concerns (assessment levels and cleanup levels) and would they drive actions equivalent to those needed to address the groundwater ingestion pathway?
- Have you discussed it with the municipality and retail public utility? Can you garner their support via ordinance and/or resolution?
- Have you conducted the 5-mile inventory of private water wells registered with the TCEQ for notification and considered the notification of all the parties requiring notice?

A quick evaluation of these factors may help you determine if an MSD is right for you.

Web Page Updates

Would you like to receive an email when we update this web page or have announcements regarding MSDs? Refer to the [instructions for signing up](#) to the MSD listserv.

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[Drinking Water & Water Availability](#) | [Reporting](#) | [Environmental Quality](#) | [Assistance, Education & Participation](#) | [Pollution Prevention & Recycling](#) | [Contracts, Funding & Fees](#) | [TCEQ Home](#)

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Last Modified 4/14/07





TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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Have you had contact with the TCEQ lately? Complete our [Customer Satisfaction Survey](#).

[BACK TO: Remediation Programs](#)>> [Questions or Comm](#)dryclnrs@tceq.state

Dry Cleaner Remediation Program

The Dry Cleaning Facility Release Fund was established by the Texas Legislature in 2001. It created Dry Cleaner Remediation Program (DCRP) for state lead clean up of dry cleaner related contaminated sites. It also established dry cleaner facility registration requirements, fees, performance standards, distributor registration, and revenue disbursement.

The DCRP establishes a [Prioritization list](#) of dry cleaner sites and administers the Dry Cleaning Facility Release Fund to assist with remediation of contamination caused by cleaning solvents. For DCRP related questions (registration or remediation) please call hotline at 512.239.1011.

Featured Items:

>> **[DCRP Program Updates and Presentations](#)**

The Dry Cleaner Remediation Program has updated a program brochure. A new presentation was recently given with the updated information.

>> **[DCRP Ranking Application, Guidance Forms, and Frequently Asked Questions](#)**

Application forms revised to reflect change in legislation, a two page guidance document, and a list of questions frequently asked.

Topics Under This Category:

>> **[Dry Cleaner Remediation Program Advisory Committee](#)**

The Dry Cleaner Advisory Committee advises the TCEQ on implementing the new Dry Cleaner Environmental Remediation Program

>> **[Dry Cleaning Remediation Fund: Required Steps](#)**

State law established a remediation fund to assist with remediation of contamination caused by dry cleaning solvents.

>> **[Forms and Guidance Documents for the Dry Cleaner Remediation Program](#)**

Forms to apply for ranking in the Dry Cleaner Remediation Program.

>> **[Legislation and Rules Update: Dry Cleaner Remediation Program](#)**

House Bill HB 2376 and Senate Bill SB 444, which amended Chapter 374 of the Texas Health & Safety Code, were passed by the 79th Texas Legislature and signed by the Governor.

Answers to Your Questions about the Dry Cleaner Remediation Program

(Revised August 9, 2006)

- A. Eligibility**
- B. Ranking and Prioritization**
- C. Coordination Between the Voluntary Cleanup Program and the Dry Cleaner Remediation Program**
- D. Corrective Action**
- E. Delinquent Registration Fees**

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.
- Former 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 dry cleaning facility 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 eligible when you apply. All subsequent property owners, as well as facility owners, must also meet all relevant 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, 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.

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. 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.

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

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 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 at a later time 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 would 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.

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>

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.

H.B. No. 2018

AN ACT

relating to eligibility for a municipal setting designation related to potential impacts to groundwater quality of solid waste activities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 361.803, Health and Safety Code, is amended to read as follows:

Sec. 361.803. ELIGIBILITY FOR A MUNICIPAL SETTING DESIGNATION. A person, including a local government, may submit a request to the executive director for a municipal setting designation for property if:

(1) the property is within the corporate limits or extraterritorial jurisdiction of a municipality authorized by statute ~~[that has a population of at least 20,000]~~; and

(2) a public drinking water supply system exists that satisfies the requirements of Chapter 341 and that supplies or is capable of supplying drinking water to:

(A) the property for which designation is sought; and

(B) property within one-half mile of the property for which designation is sought.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 2018 was passed by the House on April 13, 2007, by the following vote: Yeas 129, Nays 9, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2018 was passed by the Senate on May 8, 2007, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____
Date

Governor

AN ACT

relating to the environmental regulation and remediation of dry cleaning facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 374.102, Health and Safety Code, is amended to read as follows:

Sec. 374.102. DRY CLEANING FACILITY OR DROP STATION REGISTRATION; FEE; POSTING.

SECTION 2. Subchapter C, Chapter 374, Health and Safety Code, is amended by adding Sections 374.1022 and 374.1023 to read as follows:

Sec. 374.1022. REGISTRATION OF PROPERTY OWNER OR PRECEDING PROPERTY OWNER. (a) The following persons may participate in the fund benefits by registering as provided by this section:

(1) a person who owns real property on which a dry cleaning facility or drop station is or was located; or

(2) a preceding owner of real property on which a dry cleaning facility or drop station is or was located who entered into an agreement with the current owner associated with the sale of the real property to the current owner that requires the person to be responsible for any costs associated with cleaning up contamination covered under this chapter.

(b) For a person described by Subsection (a) to participate in fund benefits, the person must:

(1) register with the commission on or before December 31, 2007, using a form prescribed by the commission;

(2) include on the registration form information identifying the person as a:

(A) property owner; or

(B) preceding property owner; and

(3) pay the annual registration fee of \$1,500.

(c) A person described by Subsection (a) may participate in the fund benefits by registering after December 31, 2007, in the same manner as provided by Subsection (b). A person registering after that date must also pay:

(1) all past annual registration fees; and

(2) a late fee of \$100 for each month or partial month that has elapsed between December 2007 and the date of the registration.

(d) The annual registration fee may be divided into quarterly payments due over the year on dates established by the commission.

Sec. 374.1023. LIEN. (a) In addition to other remedies available under other law, a lien is imposed against the real property that is subject to a corrective action taken under this chapter if the person does not pay a registration fee under Section 374.1022 that is due while the corrective action is ongoing. The amount of the lien is the sum of:

(1) the costs of the action; and

(2) the fees due but not paid during the period of the corrective action.

(b) The lien imposed by this section arises and attaches to the real property subject to the corrective action at the time an affidavit is recorded and indexed in accordance with this section in the county in which the real property is located. For the purpose of determining rights of all affected parties, the lien does not relate back to a time before the date on which the

affidavit is recorded, which date is the lien inception date. The lien continues until the liability for the corrective action costs and registration fees is satisfied or becomes unenforceable through operation of law. The executive director shall determine whether to prepare an affidavit. In determining whether to prepare an affidavit or whether a lien is satisfied, the executive director:

(1) shall proceed in the manner that the executive director determines will most likely result in the least overall costs to the state after any cost and fee recovery action; and

(2) may take into account a landowner's financial ability to satisfy the lien, including consideration of whether the real property that is the subject of the lien:

(A) is a homestead and is being occupied as a home by the landowner; and

(B) has a fair market value of \$250,000 or less.

(c) An authorized representative of the commission must execute the affidavit. The affidavit must show:

(1) the names and addresses of the persons liable for the corrective action costs and registration fees;

(2) a description of the real property that is subject to or affected by the corrective action; and

(3) the amount of the corrective action costs and registration fees and the balance due.

(d) The county clerk shall record the affidavit in records kept for that purpose and shall index the affidavit under the names of the persons liable for the corrective action costs and registration fees.

(e) The commission shall record a relinquishment or satisfaction of the lien when the lien is paid or satisfied.

(f) The lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien.

(g) The lien imposed by this section is not valid or enforceable if real property, an interest in real property, or a mortgage, lien, or other encumbrance on or against real property is acquired before the affidavit is recorded, unless the person acquiring the real property, an interest in the property, or the mortgage, lien, or other encumbrance on the property had or reasonably should have had actual notice or knowledge that the real property is subject to or affected by a corrective action or has knowledge that the state has incurred corrective action costs and is owed registration fees.

(h) If a lien is fixed or attempted to be fixed as provided by this section, the owner of the real property affected by the lien may file a bond to indemnify against the lien. The bond must be filed with the county clerk of the county in which the real property subject to the lien is located. An action to establish, enforce, or foreclose any lien or claim of lien covered by the bond must be brought not later than the 30th day after the date of service of notice of the bond. The bond must:

(1) describe the real property on which the lien is claimed;

(2) refer to the lien claimed in a manner sufficient to identify it;

(3) be in an amount double the amount of the lien referred to;

(4) be payable to the commission;

(5) be executed by the party filing the bond as principal and a corporate surety authorized under the law of this state to execute the bond as surety; and

(6) be conditioned substantially that the principal and sureties will pay to the commission the amount of the lien claimed, plus costs, if the claim is proved to be a lien on the real

property.

(i) After the bond is filed, the county clerk shall issue notice of the bond to the named obligee. A copy of the bond must be attached to the notice. The notice may be served on each obligee by having a copy delivered to the obligee by any person competent to make oath of the delivery. The original notice shall be returned to the office of the county clerk, and the person making service of copy shall make an oath on the back of the copies showing on whom and on what date the copies were served. The county clerk shall record the bond notice and return in records kept for that purpose. In acquiring an interest in real property, a purchaser or lender may rely on and is absolutely protected by the record of the bond, notice, and return.

(j) The commission may sue on the bond after the 30th day after the date on which the notice is served but may not sue on the bond later than one year after the date on which the notice is served. The commission is entitled to recover reasonable attorney's fees if the commission recovers in a suit on the lien or on the bond.

SECTION 3. Section 374.103(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Subsection (b) and Section 374.104(d), a fee of \$20 [~~\$15~~] per gallon is imposed on the purchase of the dry cleaning solvent perchloroethylene and \$3 [~~\$5~~] per gallon on the purchase of any other dry cleaning solvent by an owner of a dry cleaning facility. The person who distributes the solvent shall collect the fees and shall pay to the commission the amount due, in accordance with Subsection (a-1).

SECTION 4. Section 374.104, Health and Safety Code, is amended by amending Subsection (b-1) and adding Subsection (g) to read as follows:

(b-1) An owner of a dry cleaning facility or drop station who files an option not to participate in accordance with Subsection (b) is entitled to a refund of ~~[credit against future]~~ registration fees paid under Section 374.102 [~~Health and Safety Code,~~] to the extent that a registration fee paid under that section in 2004 or 2005 exceeded the amount due for a nonparticipating dry cleaning facility or drop station.

(g) A person who is the owner of a dry cleaning drop station who timely files an option not to participate in fund benefits under this section may, as provided by this subsection, retain the status of the drop station as nonparticipating if the person moves the drop station to a new location. A person to whom this section applies must:

(1) provide to the commission the written consent of the property owner at the new location; and

(2) continue to comply with the other requirements of this section.

SECTION 5. Subchapter D, Chapter 374, Health and Safety Code, is amended by adding Section 374.1535 to read as follows:

Sec. 374.1535. SITE RESTRICTIONS AFTER CORRECTIVE ACTION.

(a) If the commission has completed corrective action at a dry cleaning site, perchloroethylene may not be used at that site.

(b) If the owner of a dry cleaning site uses perchloroethylene at the site after the completion of corrective action at that site, the site is not eligible for future corrective action using money from the fund.

SECTION 6. Sections 374.154(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The following persons are eligible to apply for a site to be ranked under Subsection (a):

(1) a person who is an owner of the dry cleaning facility or drop station; and

(2) a person who is registered with the commission under Section 374.1022 ~~[an owner of the real property on which the dry cleaning facility or drop station is or was located; or~~
~~[(2) - a person who was the preceding owner of the real property on which the dry cleaning facility or drop station is or was located if the person entered into an agreement with the current owner associated with the sale of the real property to the current owner that requires the person to be responsible for any costs associated with the clean up of contamination covered under this chapter].~~

(c) If the applicant for ranking:

(1) is not an owner of the real property, the application must include proof that an owner of the real property has been notified of the application;

(2) is an owner of the real property and the dry cleaning facility or drop station is leased, the application must include proof that a lessee has been notified of the application; or

(3) is a person described by Section 374.1022(a)(2) ~~[Subsection (b)(3)]~~, the application must include proof that the owner of the real property and any lessee have been notified of the application.

SECTION 7. Section 374.207, Health and Safety Code, is amended to read as follows:

Sec. 374.207. ELIGIBLE OWNER OR REGISTERED PERSON EXEMPT FROM CERTAIN CLAIMS. If an owner or a ~~[other]~~ person registered under Section 374.1022 is eligible under this chapter to have corrective action costs paid by the fund, an administrative or judicial claim may not be made under state law against the owner or other person by or on behalf of this state or by any other person, except a political subdivision, to compel corrective action or seek recovery of the costs of corrective action that result from the release.

SECTION 8. The Texas Commission on Environmental Quality shall provide the comptroller with a list of persons eligible for a refund under Section 374.104(b-1), Health and Safety Code, as amended by this Act not later than November 30, 2007, and the comptroller shall pay each refund not later than December 31, 2007. The amount of a refund paid to a person under this section is the current credit balance for that person at the time the list is completed.

SECTION 9. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 3220 was passed by the House on May 10, 2007, by the following vote: Yeas 141, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3220 was passed by the Senate on May 22, 2007, by the following vote: Yeas 31, Nays 0.

BILL ANALYSIS**Exhibit 8**

Senate Research Center

H.B. 3220
By: Elkins (Jackson)
Natural Resources
5/16/2007
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Conflicts often arise between property owners and dry cleaning facility owners who lease the property over the cost of remediating hazardous wastes resulting from expended chemicals used by dry cleaning facilities. In the event of such conflict, each side hires its own experts to determine the extent and cost of the clean-up, which is an expensive and time-consuming process, inevitably delaying the clean-up process.

H.B. 3220 provides for uniform environmental regulation and remediation of dry cleaning facilities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 374.102, Health and Safety Code, to read as follows:

Sec. 374.102. DRY CLEANING FACILITY OR DROP STATION REGISTRATION; FEE; POSTING.

SECTION 2. Amends Subchapter C, Chapter 374, Health and Safety Code, by adding Sections 374.1022 and 374.1023, as follows:

Sec. 374.1022. REGISTRATION OF PROPERTY OWNER OR PRECEDING PROPERTY OWNER. (a) Provides that a person who owns real property on which a dry cleaning facility or drop station is or was located, or the preceding owner of such property who entered into an agreement with the current owner associated with the sale of the real property to the current owner that requires the person to be responsible for any costs associated with cleaning up contamination covered under this chapter (Dry Cleaner Environmental Response), to participate in the fund benefits by registering as provided by this section.

(b) Requires a person described by Subsection (a), in order to participate in fund benefits, to register with the Texas Commission on Environmental Quality (TCEQ) on or before December 31, 2007, using a form prescribed by TCEQ, to include on such a form information identifying the person as a property owner or a preceding property owner, and pay an annual registration fee of \$1,500.

(c) Authorizes a person described by Subsection (a) to participate in fund benefits by registering after December 31, 2007, in the same manner as provided by Subsection (b). Requires a person registering after that date to pay all past annual registration fees and a late fee of \$100 for each month or partial month that has elapsed between December 2007 and the date of the registration.

- (d) Authorizes the annual registration fee to be divided into quarterly payments due over the year on dates established by TCEQ.

Sec. 374.1023. LIEN. (a) Provides that a lien is imposed, in addition to all other remedies available under other law, against the real property that is subject to a corrective action taken under this chapter if the person does not pay a registration fee under Section 372.1022 that is due while the corrective action is ongoing. Provides that the amount of the lien is the sum of the costs of the action and the fees due but not paid during the period of corrective action.

(b) Provides that the lien imposed by this section arises and attaches to the real property subject to the corrective action at the time an affidavit is recorded and indexed in accordance with this section in the county in which the real property is located. Provides that the lien does not relate back to a time before the date on which the affidavit is recorded, which date is the lien inception date, for the purpose of determining rights of all affected parties. Provides that the lien continues until the liability for the corrective action costs and registration fees is satisfied or becomes unenforceable through operation of law. Requires the executive director of TCEQ (executive director) to determine whether to prepare an affidavit. Sets forth certain actions or considerations to be taken by the executive director in determining whether to prepare an affidavit or whether a lien is satisfied.

(c) Requires an authorized representative of TCEQ to execute the affidavit. Requires the affidavit to show the names and addresses of the persons liable for the corrective action costs and registration fees, a description of the real property that is subject to or affected by the corrective action, and the amount of corrective action costs and registration fees and the balance due.

(d) Requires the county clerk to record the affidavit in records kept for that purpose and to index the affidavit under the names of the persons liable for the corrective action costs and registration fees.

(e) Requires TCEQ to record a relinquishment or satisfaction of the lien when the lien is paid or satisfied.

(f) Authorizes the foreclosure of the lien only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien.

(g) Provides that the lien imposed by this section is not valid or enforceable if real property, an interest in real property, or a mortgage, lien, or other encumbrance on or against real property is acquired before the affidavit is recorded, unless the person acquiring said property or encumbrance had or reasonably should have had actual notice or knowledge that the real property is subject to or affected by a corrective action or has knowledge that the state has incurred corrective action costs and is owed registration fees.

(h) Authorizes the owner of the real property affected by the lien, if a lien is fixed or attempted to be fixed as provided by this section, to file a bond to indemnify against the lien. Requires the bond to be filed with the county clerk of the county in which the real property subject to the lien is located. Requires an action to establish, enforce, or foreclose any lien or claim of lien covered by the bond to be brought not later than the 30th day after the date of service of notice of the bond. Sets forth certain requirements of the bond.

(i) Requires the county clerk after the bond is filed, to issue notice of the bond to the named obligee. Requires a copy of the bond to be attached to the notice. Authorizes the notice to be served on each obligee by having a copy delivered to the obligee by any person competent to

make oath of the delivery. Requires the original notice to be returned to the office of the county clerk, and the person making service of copy shall make an oath on the back of the copies showing on whom and on what date the copies were served. Requires the county clerk to record the bond notice and return in records kept for that purpose. Authorizes a purchaser or lender, in acquiring an interest in real property, to rely on and is absolutely protected by the record of the bond, notice, and return.

(j) Authorizes TCEQ to sue on the bond after the 30th day after the date on which the notice is served but may not sue on the bond later than one year after the date on which the notice is served. Entitles TCEQ to recover reasonable attorney's fees if TCEQ recovers in a suit on the lien or on the bond.

SECTION 3. Amends Section 374.103(a), Health and Safety Code, to provide, except as provided by Subsection (b) and Section 374.104(d), a fee of \$20 per gallon, rather than \$15 per gallon, is imposed on the purchase of the dry cleaning solvent perchloroethylene and \$3 per gallon, rather than \$5 per gallon, on the purchase of any other dry cleaning solvent by an owner of a dry cleaning facility.

SECTION 4. Amends Section 374.104, Health and Safety Code, by amending Subsection (b-1) and adding Subsection (g), as follows:

(b-1) Entitles an owner of a dry cleaning facility or drop station who files an option not to participate in accordance with Subsection (b) to a refund of registration fees, rather than credit against future fees, paid under Section 374.102 to the extent that a registration fee paid under that section in 2004 or 2005 exceeded the amount due for a nonparticipating dry cleaning facility or drop station. Makes a nonsubstantive change.

(g) Authorizes a person who is the owner of a dry cleaning drop station who timely files an option not to participate in fund benefits under this section, as provided by this subsection, to retain the status of the drop station as nonparticipating if the person moves the drop station to a new location. Requires a person to whom this section applies to provide to TCEQ the written consent of the property owner at the new location, and continue to comply with the other requirements of this section.

SECTION 5. Amends Subchapter D, Chapter 374, Health and Safety Code, by adding Section 374.1535, as follows:

Sec. 374.1535. SITE RESTRICTIONS AFTER CORRECTIVE ACTION. (a) Prohibits perchloroethylene from being used at a site if TCEQ has completed corrective action at a dry cleaning site.

(b) Provides that a site is not eligible for future corrective action using money from the fund if the owner of a dry cleaning site uses perchloroethylene at the site after the completion of corrective action at that site.

SECTION 6. Amends Sections 374.154(b) and (c), Health and Safety Code, as follows:

(b) Provides that certain persons are eligible to apply for a site to be ranked under Subsection (a). Deletes existing text relating to a certain person who is an owner or a previous owner.

(c) Requires an application to include proof that the owner of the real property and any lessee have been notified of the application is a person described by Section 374.1022(a)(2), rather than Subsection (b)(3).

SECTION 7. Amends Section 374.207, Health and Safety Code, as follows:

Sec. 374.207. New heading: ELIGIBLE OWNER OR REGISTERED PERSON EXEMPT FROM CERTAIN CLAIMS. Prohibits an administrative or judicial claim, if an owner or a person registered under Section 374.1022 is eligible under this chapter to have corrective action costs paid by the fund, from being made under state law against the owner or other person by or on behalf of this state or by any other person, except a political subdivision, to compel corrective action or seek recovery of the costs of corrective action that result from the release. Makes a nonsubstantive change.

SECTION 8. Requires TCEQ to provide the comptroller of public accounts with a list of persons eligible for a refund under Section 374.104(b-1), Health and Safety Code, as amended by this Act not later than November 30, 2007, and requires the comptroller to pay each refund not later than December 31, 2007. Provides that the amount of a refund paid to a person under this section is the current credit balance for that person at the time the list is completed.

SECTION 9. Effective date: upon passage or September 1, 2007.