

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
DRYCLEANER ENVIRONMENTAL)
RESPONSE TRUST FUND ACT)
PROPOSAL TO:)
ADD 35 ILL. ADM. CODE PARTS) R21-
1501.100 TO 1501.450,) (Rulemaking – Land)
REPEAL 35 ILL. ADM. CODE PARTS)
1500.10 THROUGH 1500.70, AND)
REPEAL 2 ILL. ADM. CODE PARTS)
3100.10 THROUGH 3100.60)

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NOTICE

TO: ATTACHED CERTIFICATE OF SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the **RULEMAKING PROPOSAL entitled “DRYCLEANER ENVIRONMENTAL RESPONSE TRUST FUND ACT PROPOSAL TO: ADD 35 ILL. ADM. CODE 1501.100 TO 1501.450, REPEAL 35 ILL. ADM. CODE 1500.10 THROUGH 1500.70, AND REPEAL 2 ILL. ADM. CODE 3100.10 THROUGH 3100.60”, APPEARANCES, PROPOSAL OF REGULATION, STATEMENT OF REASONS, PROPOSED REPEAL OF 2 ILL. ADM. CODE 3100, PROPOSED REPEAL OF 35 ILL. ADM. CODE 1500, PROPOSED ADDITION OF 35 ILL. ADM. CODE 1501, and TECHNICAL SUPPORT DOCUMENT** of the Illinois Environmental Protection Agency, copies of which are herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DATED: February 9, 2021

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

By: /s/ John M. McDonough II
John M. McDonough II
Assistant Counsel

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APPEARANCE

The undersigned hereby enters this **APPEARANCE** as an attorney on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ John M. McDonough II
John M. McDonough II
Assistant Counsel

DATED: February 9, 2021

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
john.mcdonough@illinois.gov

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APPEARANCE

The undersigned hereby enters this **APPEARANCE** as an attorney on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Kyle Nash Davis
Kyle Nash Davis
Deputy General Counsel

DATED: February 9, 2021

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
kyle.davis@illinois.gov

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**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S PROPOSAL OF
REGULATION**

The Illinois Environmental Protection Agency moves that the Illinois Pollution Control Board adopt the attached regulation.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ John J. Kim
John J. Kim
Director

DATED: February 9, 2021

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

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STATEMENT OF REASONS

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by and through its counsels Kyle Nash Davis and John McDonough II, and hereby submits this **STATEMENT OF REASONS** to the Illinois Pollution Control Board (“Board”) pursuant to Sections 13, 22, 27, and 28 of the Illinois Environmental Protection Act (“Act”) (415 ILCS 5/13, 22, 27, and 28), Sections 12 and 25 of the Drycleaner Environmental Response Trust Fund Act (415 ILCS 135/12 and 25), as well as, Title 35 Ill. Adm. Code Part 102.202 of the Board’s procedural rules, and in support of the attached proposed regulations provides as follows.

I. INTRODUCTION

The Illinois EPA has been tasked by the Illinois General Assembly to provide oversight and implementation of the Drycleaner Environmental Response Trust Fund Act (“DERT Fund Act”). (See: 415 ILCS 135/5). Pursuant to the 2019 amendments to the DERT Fund Act, as of July 1, 2020, the Illinois EPA has responsibility for the implementation of the DERT Fund Act and administration of the Drycleaner Environmental Response Trust Fund (“DERT Fund”). The Illinois EPA is currently following the rules set in place by the Drycleaner Environmental Response Trust Fund Council (“Council”) within Title 35 of the Illinois Administrative Code after

the DERT Fund Act amendments became Board rules on July 1, 2020. (See: 415 ILCS 135/12 and 35 Ill. Adm Code Parts 1500.10 to 1500.70 generally).

The attached proposal repeals 35 Ill. Adm. Code Part 1500 in its entirety and proposes the simultaneous adoption and replacement of the aforementioned regulations with new 35 Ill. Adm. Code Part 1501, which will incorporate the Illinois EPA's authorities and clarify its duties and responsibilities under the DERT Fund Act. This proposal further presents a simultaneous repeal of Freedom of Information Act rules adopted by the Council and set forth within 2 Ill. Adm. Code Part 3100, since the Board and Illinois EPA have such rules in place. (See: 2 Ill. Adm. Code 1825, 1828, and 2175 generally). The Illinois EPA certifies that the attached language of the rulemaking proposal is the most recent version available.

II. BACKGROUND

On August 19, 1997, P.A. 90-502 was signed into law creating the DERT Fund and establishing the Council. The DERT Fund Act prohibits a drycleaning facility in the State from operating without a license. The Council was authorized to adopt rules governing the DERT Fund Act's programmatic processes for licensing drycleaning facilities. In 1999, the Council proposed such rules at 35 Ill. Adm. Code Part 1500, which became effective on January 1, 2000. The Council was responsible for licensing drycleaning facilities and overseeing environmental insurance coverage and remedial claim reimbursement from the DERT Fund. These activities include reviewing and authorizing reimbursement to claimants for eligible expenses related to remedial activities undertaken at current and former drycleaning sites. The Council was not subject to Illinois EPA oversight and was not otherwise subject to Illinois EPA or Board regulation.

On August 16, 2019, the Governor signed P.A. 101-400 into law, upon which the Illinois EPA and the Council began transitioning responsibilities. The powers, duties, rights, and responsibilities of the Council were transferred to the Illinois EPA. (See: 415 ILCS 135/12(a)).

Pursuant to the DERT Fund Acts 2019 amendments, the Council was abolished effective June 30, 2020. Beginning July 1, 2020, the Illinois EPA became vested with authorities necessary and convenient to implement and administer the DERT Fund Act. The Illinois EPA is now responsible for licensing drycleaning facilities. Subpart B of the rulemaking proposal addresses the requirements for obtaining a license. (See: 415 ILCS 135/60(h)). Additionally, the Illinois EPA is responsible for reviewing and authorizing reimbursement of costs associated with two types of claims for payment from the DERT Fund. First, Subpart C of the proposed rulemaking addresses historic claims seeking reimbursement. (See: 415 ILCS 135/40(a)). Second, Subpart D of the Illinois EPA's proposal regulates the administration of insurance claims paid from the DERT Fund. (See: 415 ILCS 135/45(a)). Additional information regarding the technical feasibility and economic reasonableness of the proposed rulemaking can be found in the attached *Technical Support Document*.

General information pertaining to drycleaning facilities and their administration can be found on Illinois EPA's webpage:

- (1) <https://www2.illinois.gov/epa/topics/cleanup-programs/srp/Pages/dry-cleaning.aspx> ; and
- (2) <https://www2.illinois.gov/dceo/SmallBizAssistance/EnvironmentalAssistanceProgram/Pages/DryCleaners.aspx>.

III. REGULATORY PROPOSAL: PURPOSE AND EFFECT (INCLUDING ENVIRONMENTAL, TECHNICAL, AND ECONOMIC JUSTIFICATION)

The proposed amendments represent the simplest solution to allow the Illinois EPA to conduct the powers, duties, rights and responsibilities under the DERT Fund Act by allowing for a repeal of rules designed for the Council and replacing them with rules under which the Illinois EPA will conduct the oversight and responsibilities thereunder. Following the Illinois EPA's drafting of the proposed rule and amendments to the regulations, the Illinois EPA conducted

outreach by circulating the proposal with interested parties and meeting with interested parties as requested to discuss the proposal. The interested parties included the Illinois Professional Drycleaners & Launderers, the National Drycleaners Institute, and the Korean- American Drycleaners Association.

- Environmental Justification- The Illinois EPA's unique role in providing site specific oversight for projects under its Site Remediation Program (SRP) has provided the Illinois EPA with a general knowledge of the DERT Fund Act program. Since the Illinois EPA will retain review and oversight of releases and response actions, a transition to oversight of reimbursement and other tasks related to administration of the DERT Fund will not be overly foreign to the Illinois EPA as it performs such functions in the course of its oversight of other sites and programs currently, most significantly in its administration of the Underground Storage Tank Fund. The Illinois EPA's expertise will translate into consistent application of the DERT Fund Act and administration of the DERT Fund.
- Technical Justification- The Illinois EPA's Bureau of Land SRP has and will continue to oversee identified releases and responses as provided under the DERT Fund Act. Adopting updated rules that clearly reference the Illinois EPA and its duties under the DERT Fund Act will help regulated persons respond to releases in a more efficient manner since the regulator will be involved at all phases of the process and the regulations will reflect a consistent policy. Leaving older rules that were tailored for another entity is not as effective as allowing for new rules from the new regulatory unit.
- Economic Justification- The proposed rules are consistent with the Council's past administration of the DERT Fund, the rules currently applicable to the Illinois EPA's administration of the DERT Fund, and the DERT Fund Act. Therefore, the proposed rules

do not create any new economic burden for drycleaners. In fact, combining the Illinois EPA's oversight expertise and program specific past knowledge with its new responsibilities under the DERT Fund Act offers potentially faster review of issues and eliminates any blurred lines of authority between the former Council and the Illinois EPA.

IV. REGULATORY PROPOSAL: ECONOMIC SCOPE AND IMPACT

The parties regulated under the proposed rules are the same parties regulated under the currently applicable rules. The proposed rules are consistent with the Council's past administration of the DERT Fund, the rules currently applicable to the Illinois EPA's administration of the DERT Fund, and the DERT Fund Act. Therefore, the proposed rules do not create any new economic burden for drycleaners.

V. SYNOPSIS OF TESTIMONY

The Illinois EPA anticipates calling James Jennings, Manager, Waste Reduction and Compliance Section, Bureau of Land, Illinois EPA. Additionally, the Illinois EPA will have additional staff available at hearing to assist in answering questions or comments, if necessary. Written testimony from Mr. Jennings will be submitted prior to initial hearing in accordance with the Board's procedural rules.

VI. PUBLISHED STUDY OR RESEARCH PROJECT

In accordance with Title 35 of the Illinois Administrative Code, Section 102.202(e), "a descriptive title or other description of any published study or research report used in developing the rule" is required in the proposed regulations. Additionally, "a complete justification for the inapplicability or unavailability" is required "when any information required under this section is inapplicable or unavailable." 35 Ill. Adm. Code 102.202(k). Neither a published study nor research

report was used in developing the proposed regulations. Therefore, Section 102.202(e) is inapplicable to the attached amendments.

VII. CONCLUSION

Based upon the forgoing, the Illinois EPA believes the most effective and efficient manner for the Illinois EPA to administer the DERT Fund and other elements of the DERT Fund Act is for the Board to adopt rules tailored to the Illinois EPA's operations and oversight structure rather than retain the currently applicable rules. A revision to the rules that address the authorities and responsibilities under the DERT Fund Act, and clarification of those responsibilities as they specifically relate to the Illinois EPA, will only help to further an understanding between the Illinois EPA and the regulated community. Comprehensive rules speaking to the Illinois EPA's new responsibilities and authorities are included within this proposal.

WHEREFORE, the Illinois EPA respectfully requests the Board adopt the Illinois EPA's proposals above in their entirety and as submitted.

Respectfully submitted,

**ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,**

By: /s/ Kyle Nash Davis, Deputy General Counsel
/s/ John M. McDonough II, Assistant Counsel

DATED: February 9, 2021

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

~~TITLE 2: GOVERNMENTAL ORGANIZATION
SUBTITLE E: MISCELLANEOUS STATE AGENCIES
CHAPTER LXI: DRYCLEANER ENVIRONMENTAL RESPONSE TRUST FUND
COUNCIL OF ILLINOIS
PART 3100 PUBLIC INFORMATION
SECTION 3100.10 INTRODUCTION~~

~~Section 3100.10 Introduction~~

~~This Part is established to implement the provisions of the Freedom of Information Act [5 ILCS 140]. The purpose of this Part is to support the policy of providing public access to the public records in the possession of the Drycleaner Environmental Response Trust Fund Council of Illinois while, at the same time, protecting legitimate privacy interests and maintaining administrative efficiency.~~

~~Section 3100.20 Definitions~~

~~Terms used in this Part shall have the same meaning as in the Freedom of Information Act.~~

~~"Administrator" means the Administrator of the Drycleaner Environmental Response Trust Fund Council of Illinois.~~

~~"Council" means the Drycleaner Environmental Response Trust Fund Council of Illinois.~~

~~"FOIA" means the Freedom of Information Act.~~

~~"Freedom of Information Officer" means the Administrator of the Drycleaner Environmental Response Trust Fund Council of Illinois.~~

~~"Requester" means a person who submits a request for inspection or copying of public records in accordance with this Part.~~

~~Section 3100.30 Procedures for Requesting Public Records~~

- a) ~~Person to Whom Requests are Submitted~~
~~Requests for inspection or copying of public records shall be submitted to the Freedom of Information Officer of the Council. Requests shall be submitted to the following address:~~

~~Administrator
Drycleaner Environmental Response Trust Fund Council of
Illinois
P.O. Box 480~~

~~Bensenville, Illinois 60106~~

~~b) Form and Content of Requests~~

- ~~1) Requests must be made in accordance with FOIA. Requests may be submitted on FOIA request forms available from the Council.~~
- ~~2) The requester shall provide the following information in a request for inspection or copying of public records:
 - ~~A) The requester's full name, address and telephone number;~~
 - ~~B) A brief description of the public records sought, being as specific as possible;~~
 - ~~C) Whether the request is for inspection of public records, copies of public records, or both.~~~~

~~(Source: Amended at 30 Ill. Reg. 19615, effective December 12, 2006)~~

Section 3100.40 Procedures for Council Response to Requests for Public Records

~~a) Timeline for Council Response~~

- ~~1) The Council shall respond to a written request for inspection or copying of public records within 7 working days after receipt of the request.~~
- ~~2) The Council may give notice of an extension of time to respond that does not exceed an additional 7 working days. An extension is allowable only if written notice is provided within the original 7 working day time limit and only for reasons provided in Section 3(d) of FOIA. Notice of extension shall state the reasons the extension is necessary.~~

~~b) Types of Council Responses~~

- ~~1) The Council shall respond to a request for inspection or copying of public records in one of three ways:
 - ~~A) Approve the request;~~
 - ~~B) Approve in part and deny in part;~~
 - ~~C) Deny the request.~~~~
- ~~2) Upon approval of a request for inspection or copying of public records, the Council may either make available the materials, give notice that the~~

~~materials shall be made available upon payment of reproduction costs, or give notice of the time and place for inspection of records.~~

- ~~3) — A denial of a request shall be made in writing. It shall state the reasons for the denial in accordance with either Section 3(f) or Section 7 of FOIA and the names and titles of individuals responsible for the decision. It shall also give notice of the requester's right to appeal to the Chairperson of the Council.~~
- ~~4) — Categorical requests creating an undue burden upon the Council shall be denied only after extending to the requester an opportunity to confer with the Council in an attempt to reduce the request to manageable proportions in accordance with Section 3(f) of FOIA.~~

~~5) — Failure to respond to a written request within 7 working days may be considered by the requester as a denial of the request.~~

Section 3100.50 Procedures for Appeal of a Denial

~~a) — Appeal of a Denial~~

- ~~1) — A requester whose request has been denied by the Freedom of Information Officer may appeal the denial to the Chairperson of the Council. The notice of appeal shall be filed in writing within 14 working days after receipt of the denial and sent to:~~

~~Chairperson
Drycleaner Environmental Response Trust Fund Council of
Illinois
P.O. Box 480
Bensenville, Illinois 60106~~

- ~~2) — The notice of appeal shall include a copy of the original request, a copy of the denial received by the requester, and a statement of the reasons why the appeal should be granted.~~

~~b) — Chairperson's Response to Appeal~~

~~The Chairperson shall respond to an appeal within 7 working days after receiving notice. The Chairperson shall either affirm the denial or provide access to the requested public records.~~

~~(Source: Amended at 30 Ill. Reg. 19615, effective December 12, 2006)~~

Section 3100.60 Procedures for Providing Public Records to Requesters

~~a) — Inspection of Public Records~~

- 1) ~~Inspection of records shall take place in and during normal working hours of the Administrator.~~
- 2) ~~Documents the requester wishes to have copied shall be segregated during the course of the inspection. Generally, all copying shall be done by the Administrator or his/her employees.~~
- 3) ~~An employee of the Administrator may be present throughout the inspection. A requester may be prohibited from bringing bags, brief cases, or other containers into the inspection room.~~

b) ~~Copies of Public Records~~

- 1) ~~Copies of public records shall be provided to the requester only upon payment of any charges due.~~
- 2) ~~Charges for copies of public records shall be assessed in accordance with the fee schedule in Appendix A of this Part.~~
- 3) ~~Charges shall be waived if the requester is a State Agency, a constitutional officer or a member of the General Assembly. Charges may be waived or reduced in any case where the Freedom of Information Officer determines that the waiver serves the public interest.~~

e) ~~General Materials Available from the Freedom of Information Officer~~
~~The Freedom of Information Officer shall make available to the public at no charge the following materials:~~

- 1) ~~A brief description of the organizational structure and budget of the Council;~~
- 2) ~~A brief description of the means for requesting information and public records;~~

3) ~~A list of the types and categories of public records maintained by the Council.~~

~~Section 3100. APPENDIX A Fee Schedule for Duplication of Public Records~~

<u>Type of Duplication</u>	<u>Charge</u>
Paper copy from paper original	\$.50/page
Paper copy from computer original	— .50/page
Certification of Public Records	— .50/certification

~~Some records possessed by the Council are in book or pamphlet form. A charge may be assessed for copying those materials based upon the copying cost incurred by the Council.~~

~~Section 3100.APPENDIX B Public Records Requests~~

~~Section 3100.ILLUSTRATION A Request for Public Records~~

~~DRYCLEANER ENVIRONMENTAL RESPONSE~~

~~TRUST FUND COUNCIL OF ILLINOIS~~

~~P.O. Box 480~~

~~Bensenville, IL 60106~~

~~TO: Administrator~~

~~Drycleaner Environmental Response~~

~~Trust Fund Council of Illinois~~

~~P.O. Box 480~~

~~Bensenville, Illinois 60106~~

~~FROM:~~

Name

Address

Telephone Number

~~DESCRIPTION OF REQUESTED RECORDS:~~

Please indicate if you wish to inspect the above captioned records or wish a copy of them:

Inspection

Copy

Both

Do you wish to have copies certified? Yes No

~~FOR OFFICE USE ONLY~~

Date Received

Date Response Due

Notations re: Oral Communications or Other Items

(Source: Amended at 30 Ill. Reg. 19615, effective December 12, 2006)

~~Section 3100.APPENDIX B Public Records Requests~~

~~Section 3100.ILLUSTRATION B Approval of Request for Public Records~~

~~DRYCLEANER ENVIRONMENTAL RESPONSE
TRUST FUND COUNCIL OF ILLINOIS
P.O. Box 480
Bensenville, Illinois 60106~~

APPROVAL OF REQUEST FOR PUBLIC RECORDS

TO: _____ FROM: Administrator
Name _____ Drycleaner Environmental Response
_____ Trust Fund Council of Illinois
_____ P.O. Box 480
Address _____ Bensenville, Illinois 60106
_____ Telephone Number _____

~~DESCRIPTION OF REQUESTED RECORDS:~~

Your request dated _____ for the above captioned records has been approved.

The documents you requested are enclosed.

The documents will be made available upon payment of the copying costs in the amount of _____.

You may inspect the records at _____ on _____.
Date

FOIA Officer Date

(Source: ~~Amended at 30 Ill. Reg. 19615, effective December 12, 2006)~~

~~Section 3100.APPENDIX B Public Records Requests~~

~~Section 3100.ILLUSTRATION C Partial Approval of Request~~

~~DRYCLEANER ENVIRONMENTAL RESPONSE
TRUST FUND COUNCIL OF ILLINOIS
P.O. Box 480
Bensenville, Illinois 60106~~

~~PARTIAL APPROVAL OF REQUEST~~

TO: _____ FROM: Administrator
Name _____ Drycleaner Environmental Response
_____ Trust Fund Council of Illinois
_____ P.O. Box 480
Address _____ Bensenville, Illinois 60106
_____ Telephone Number _____

Pursuant to your written request of _____, enclosed you will find copies of the records you have requested. Please note that pursuant to Section 8 of the Freedom of Information Act, certain material originally contained in these records has been deleted because the material is exempt material under Section 7 of the Act.

FOIA Officer

Date

(Source: Amended at 30 Ill. Reg. 19615, effective December 12, 2006)

~~Section 3100.APPENDIX B Public Records Requests~~

~~Section 3100.ILLUSTRATION D Extension of Time for Disclosure~~

DRYCLEANER ENVIRONMENTAL RESPONSE
TRUST FUND COUNCIL OF ILLINOIS
P.O. Box 480
Bensenville, IL 60106

EXTENSION OF TIME FOR DISCLOSURE

TO: _____ FROM: Administrator
Name Drycleaner Environmental Response
Trust Fund Council of Illinois
P.O. Box 480
Bensenville, Illinois 60106

Address

Telephone Number

We have been unable to fill your recent request for inspection or copying of public records of _____ for the reasons checked below:
Date

~~The requested records are stored in another location.~~

~~The request requires the collection of a large number of records.~~

~~The request is categorical in nature and requires an extensive search. We have failed to locate the requested records in our initial attempt and the search is continuing.~~

~~The requested records require examination by a competent person in order to determine which, if any, are exempt under Section 7 of the Act.~~

~~It would unduly burden or interfere with the operations of the Council to fill the request within the initial 7 working days.~~

~~There is a need for consultation with another public body that has a substantial interest in the determination or in the subject matter of the request.~~

The records you have requested will be available to you by _____ (a date within 14 working days after receipt of the request) or we will make a decision denying your request by that date.

FOIA Officer

Date

(Source: ~~Amended at 30 Ill. Reg. 19615, effective December 12, 2006)~~

~~Section 3100.APPENDIX B Public Records Requests~~

~~Section 3100.ILLUSTRATION E Denial of Request~~

~~DRYCLEANER ENVIRONMENTAL RESPONSE
TRUST FUND COUNCIL OF ILLINOIS
P.O. Box 480
Bensenville, IL 60106~~

~~DENIAL OF REQUEST~~

TO: _____ FROM: Administrator
Name _____ Drycleaner Environmental
_____ Response Trust Fund Council of
_____ Illinois
Address _____ P.O. Box 480
_____ Bensenville, Illinois 60106
Telephone Number _____

You are hereby notified that your request for the disclosure of:

~~is hereby denied and the reason for the denial is as follows:~~

(~~reason for denial, stating the basis in FOIA~~)

The person or persons making this decision to deny and their title or titles are set forth below:

Name _____ Official Title _____

~~You are hereby further notified that you have the right to appeal this decision to the Chairperson of the Drycleaner Environmental Response Trust Fund Council of Illinois who, under the Illinois Freedom of Information Act, will make a decision either to affirm the denial of disclosure or to allow disclosure within 7 working days after you file a notice of appeal. Such letter or request should be filed within 14 days after your receipt of this letter. If the decision to deny your request for disclosure was made by the Chairperson of the Drycleaner Environmental Response Trust Fund Council of Illinois, you have the right to appeal the decision of the Chairperson to the Circuit Court for the county where the Council has its principal office or where you reside, under Section 11 of the Freedom of Information Act.~~

FOIA Officer

Date

~~(Source: Amended at 30 Ill. Reg. 19615, effective December 12, 2006)~~

~~TITLE 35: DRYCLEANER ENVIRONMENTAL RESPONSE TRUST FUND COUNCIL
OF ILLINOIS
SUBTITLE N: DRYCLEANING
CHAPTER V: DRYCLEANER ENVIRONMENTAL RESPONSE TRUST FUND
COUNCIL OF ILLINOIS
PART 1500 GENERAL PROGRAM
SECTION 1500.10 GENERAL~~

~~Section 1500.10 General~~

~~This Part sets forth the rules, regulations and requirements of the Drycleaner Environmental Response Trust Fund Act. The purpose of this Part is to support and further define the policies for implementing the Drycleaner Environmental Response Trust Fund Act [415 ILCS 135].~~

~~AUTHORITY: Implementing and authorized by the Drycleaner Environmental Response Trust Fund Act [415 ILCS 135/20].~~

~~SOURCE: Emergency rule adopted at 24 Ill. Reg. 307, effective January 1, 2000, for a maximum of 150 days; emergency expired May 29, 2000; adopted at 24 Ill. Reg. 10162, effective June 26, 2000; amended at 28 Ill. Reg. 9051, effective June 21, 2004; amended at 30 Ill. Reg. 7939, effective April 13, 2006; amended at 30 Ill. Reg. 19631, effective December 12, 2006; amended at 31 Ill. Reg. 5756, effective March 27, 2007; amended at 32 Ill. Reg. 16406, effective September 26, 2008; amended at 35 Ill. Reg. 1619, effective January 18, 2011; amended at 36 Ill. Reg. 18521, effective December 13, 2012; amended at 39 Ill. Reg. 5775, effective April 8, 2015.~~

~~Section 1500.20 Definitions~~

~~"Act" means the Drycleaner Environmental Response Trust Fund Act.~~

~~"Administrator" means the Administrator of the Drycleaner Environmental Response Trust Fund Council of Illinois.~~

~~"Active drycleaning facility" means a drycleaning facility actively engaged in drycleaning operations and licensed under Section 60 of the Act.~~

~~"Agency" means the Illinois Environmental Protection Agency.~~

~~"Claimant" means an owner or operator of a drycleaning facility who has applied for reimbursement from the remedial account or who has submitted a claim under the insurance account with respect to a release.~~

~~"Council" means the Drycleaner Environmental Response Trust Fund Council.~~

~~"Drycleaner Environmental Response Trust Fund" or "Fund" means the fund created under Section 10 of the Act.~~

~~"Drycleaning facility" means a facility located in this State that is or has been engaged in drycleaning operations for the general public, other than a facility located on a United States military base; an industrial laundry, commercial laundry, or linen supply facility; a prison or other penal institution that engages in drycleaning only as part of a Correctional Industries program to provide drycleaning to persons who are incarcerated in a prison or penal institution or to resident patients of a State-operated mental health facility; a not-for-profit hospital or other health care facility; or a facility located or formerly located on federal or State property.~~

~~"Drycleaning operations" means drycleaning of apparel and household fabrics for the general public, as described in Standard Industrial Classification Industry No. 7215 and No. 7216 in the Standard Industrial Classification (SIC) Manual by the Technical Committee on Industrial Classification, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 653-5075 (1987; no later editions or amendments are incorporated).~~

~~"Drycleaning machine with a solvent reclaimer" means a petroleum-based or hydrocarbon-based drycleaning machine that utilizes a drying system in which the drycleaning solvent vapors from the drying process are captured and not emitted into the atmosphere.~~

~~"Drycleaning machine without a solvent reclaimer" means a petroleum-based or hydrocarbon-based drycleaning machine that uses a transfer process in which the garments are cleaned in one machine and then transferred to a dryer that does not recapture the drycleaning solvent remaining in the garments. The dryer emits the solvent vapors directly into the atmosphere.~~

~~"Drycleaning solvent" means any and all nonaqueous solvents, including but not limited to a chlorine-based or petroleum-based formulation or product, including green solvents, that are used as a primary cleaning agent in drycleaning operations.~~

~~"Emergency" or "emergency action" means a situation or an immediate response to a situation to protect public health or safety. "Emergency" or "emergency action" does not mean removal of contaminated soils, recovery of free product, or financial hardship. An "emergency" or "emergency action" would normally be~~

expected to be directly related to a sudden event or discovery and would last until the threat to public health is mitigated.

~~"Focused site investigation" means an investigation designed to identify recognized environmental conditions and related contaminants of concern that may exist at a site and to investigate the environmental conditions and contaminants of concern that are associated with drycleaning solvents. The focused site investigation shall be performed in two phases. A phase I environmental assessment shall be designed and implemented in accordance with the procedures for such establishments set forth in "Standard Practices for Environmental Site Assessments: Phase I Environmental Site Assessment Process" (ASTM E 1527-00), available from the American Society for Testing and Materials, 1916 Race St., Philadelphia PA 19103, (215) 299-5400 (2000; no later editions or amendments are incorporated). The phase I environmental site assessment shall be designed and implemented to address those environmental conditions or contaminants of concern, including drycleaning solvents that may be associated with the site. A focused phase II environmental site assessment shall be designed and implemented to address those environmental conditions or contaminants of concern identified by the phase I environmental site assessment that are associated with drycleaning solvents. A focused phase II environmental site assessment investigation shall generally follow those requirements that are applicable to the phase II investigation as set forth in the Illinois Pollution Control Board's site remediation program requirements (35 Ill. Adm. Code 740.420(b)).~~

~~"Green solvent" means a drycleaning solvent evaluated and classified by the Council with assistance from the Agency to be biodegradable that, if released into the environment, would not require remedial action per the Agency or per the United States Environmental Protection Agency.~~

~~"Hydrocarbon-based solvent" means the same as a petroleum-based solvent.~~

~~"Inactive drycleaning facility" means a drycleaning facility that is not being used for drycleaning operations and is not registered under the Act.~~

~~"Operator" means a person or entity holding a business license to operate a licensed drycleaning facility or the business operation of which the drycleaning facility is a part.~~

~~"Owner" means a person who owns or has possession or control of a drycleaning facility at the time a release is discovered, regardless of whether the facility remains in operation, or a parent corporation of such person.~~

~~"Person" means an individual, trust, firm, joint stock company, corporation, consortium, joint venture, or other commercial entity.~~

~~"Program year" means the period beginning on July 1 and ending on the following June 30.~~

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or dispersing of drycleaning solvents from a drycleaning facility to groundwater, surface water, or subsurface soils.

"Remedial action" means activities taken to comply with Sections 58.6 and 58.7 of the Environmental Protection Act [415 ILCS 5/58.6 and 58.7] and rules adopted by the Pollution Control Board under those Sections.

"Service provider" means a consultant, testing laboratory, monitoring well installer, soil boring contractor, other contractor, lender, or any other person who provides a product or service for which a claim for reimbursement has been or will be filed against the remedial account or insurance account, or a subcontractor of such a person.

"Tiered Approach to Corrective Action Objectives" or "TACO" means risk based remedial action standards as defined in the Illinois Pollution Control Board's site remediation program requirements (35 Ill. Adm. Code 742).

"Virgin facility" means a drycleaning facility that has never had chlorine-based or petroleum-based drycleaning solvents stored or used at the property prior to it becoming a green solvent drycleaning facility. [415 ILCS 135/5]

(Source: ~~Amended at 28 Ill. Reg. 9051, effective June 21, 2004)~~

~~Section 1500.30 Drycleaning Facility License~~

- a) ~~On and after January 1, 1998, every active drycleaning facility must obtain a license from the Council. No person shall operate a drycleaning facility in this State without a license issued by the Council for that facility. (Section 60(a) of the Act)~~
- b) ~~The Council shall issue initial and annual renewal licenses to an active drycleaning facility upon an applicant's submission of a completed application prescribed by the Council (see Section 1500.60(a)) and proof of payment of the required fee to the Department of Revenue by submittal of the DS-3 Form (prescribed by the Department of Revenue) and, if the drycleaning facility has previously received or is currently receiving reimbursement for the costs of remedial action, as defined in the Act, proof of compliance with Section 1500.40(j) (Section 60(b) of the Act) subject to the following:~~
 - 1) ~~The annual license period is January 1 through December 31.~~
 - 2) ~~The license fee and the DS-3 Form must be submitted to the Department of Revenue 60 days prior to issuance of a license.~~

- 3) ~~The Department of Revenue will return the applicant's copy of the DS-3 Form to confirm receipt of the appropriate license fee.~~
 - 4) ~~The original DS-3 Form returned from the Department of Revenue must be submitted to the Council with the license application or renewal application. Applications submitted without the original DS-3 Form will be returned to the applicant.~~
 - 5) ~~Upon receipt of a properly completed license application and an original DS-3 Form indicating the appropriate license fee has been received by the Department of Revenue, the Council will process the license application.~~
 - 6) ~~License fees are non-refundable.~~
 - 7) ~~Any drycleaning facility that begins operation on or after January 1, 2000 must obtain a license prior to operating the facility.~~
 - 8) ~~Submittal of current environmental liability financial assurance policy, including the declaration sheet, reflecting, at a minimum, \$500,000 of coverage on the active drycleaning facility. Active drycleaning facilities using the Council's financial assurance policy, as defined in Section 1500.50, to meet this requirement do not need to submit a copy of their financial assurance policy.~~
- e) ~~On or after January 1, 2007, the required annual fee for a license is as follows:~~
- 1) ~~\$1,500 for a facility that uses:~~
 - A) ~~50 gallons or less of chlorine-based or green drycleaning solvents annually; or~~
 - B) ~~250 or less gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer; or~~
 - C) ~~500 gallons or less annually of hydrocarbon-based drycleaning solvents in a drycleaning machine without a solvent reclaimer. (Section 60(e)(1) of the Act)~~
 - 2) ~~\$2,250 for a facility that uses:~~
 - A) ~~more than 50 gallons but not more than 100 gallons of chlorine-based or green drycleaning solvents annually; or~~
 - B) ~~more than 250 gallons but not more than 500 gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer; or~~

- ~~C) — more than 500 gallons but not more than 1,000 gallons annually of hydrocarbon-based drycleaning solvents in a drycleaning machine without a solvent reclaimer. (Section 60(c)(2) of the Act)~~
- ~~3) — \$3,000 for a facility that uses:~~

 - ~~A) — more than 100 gallons but not more than 150 gallons of chlorine-based or green drycleaning solvents annually; or~~
 - ~~B) — more than 500 gallons but not more than 750 gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer; or~~
 - ~~C) — more than 1,000 gallons but not more than 1,500 gallons annually of hydrocarbon-based drycleaning solvents in a drycleaning machine without a solvent reclaimer. (Section 60(c)(3) of the Act)~~
- ~~4) — \$3,750 for a facility that uses:~~

 - ~~A) — more than 150 gallons but not more than 200 gallons of chlorine-based or green drycleaning solvents annually; or~~
 - ~~B) — more than 750 gallons but not more than 1,000 gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer; or~~
 - ~~C) — more than 1,500 gallons but not more than 2,000 gallons annually of hydrocarbon-based drycleaning solvents in a drycleaning machine without a solvent reclaimer. (Section 60(c)(4) of the Act)~~
- ~~5) — \$4,500 for a facility that uses:~~

 - ~~A) — more than 200 gallons but not more than 250 gallons of chlorine-based or green drycleaning solvents annually; or~~
 - ~~B) — more than 1,000 gallons but not more than 1,250 gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer; or~~
 - ~~C) — more than 2,000 gallons but not more than 2,500 gallons annually of hydrocarbon-based drycleaning solvents in a drycleaning machine without a solvent reclaimer. (Section 60(c)(5) of the Act)~~
- ~~6) — \$5,000 for a facility that uses:~~

 - ~~A) — more than 250 gallons but not more than 300 gallons of chlorine-based or green drycleaning solvents annually; or~~

~~B) — more than 1,250 gallons but not more than 1,500 gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer; or~~

~~C) — more than 2,500 gallons but not more than 3,000 gallons annually of hydrocarbon-based drycleaning solvents in a drycleaning machine without a solvent reclaimer. (Section 60(e)(6) of the Act)~~

~~7) — \$5,000 for a facility that uses:~~

~~A) — more than 300 gallons but not more than 350 gallons of chlorine-based or green drycleaning solvents annually; or~~

~~B) — more than 1,500 gallons but not more than 1,750 gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer; or~~

~~C) — more than 3,000 gallons but not more than 3,500 gallons annually of hydrocarbon-based drycleaning solvents in a drycleaning machine without a solvent reclaimer. (Section 60(e)(7) of the Act)~~

~~8) — \$5,000 for a facility that uses:~~

~~A) — more than 350 gallons but not more than 400 gallons of chlorine-based or green drycleaning solvents annually; or~~

~~B) — more than 1,750 gallons but not more than 2,000 gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer; or~~

~~C) — more than 3,500 gallons but not more than 4,000 gallons annually of hydrocarbon-based drycleaning solvents in a drycleaning machine without a solvent reclaimer. (Section 60(e)(8) of the Act)~~

~~9) — \$5,000 for a facility that uses:~~

~~A) — more than 400 gallons but not more than 450 gallons of chlorine-based or green drycleaning solvents annually; or~~

~~B) — more than 2,000 gallons but not more than 2,250 gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer; or~~

~~C) — more than 4,000 gallons but not more than 4,500 gallons annually of hydrocarbon-based drycleaning solvents in a drycleaning machine without a solvent reclaimer. (Section 60(e)(9) of the Act)~~

~~10) — \$5,000 for a facility that uses:~~

~~A) — more than 450 gallons but not more than 500 gallons of chlorine-based or green drycleaning solvents annually; or~~

~~B) — more than 2,250 gallons but not more than 2,500 gallons annually of hydrocarbon-based solvents used in a drycleaning machine equipped with a solvent reclaimer; or~~

~~C) — more than 4,500 gallons but not more than 5,000 gallons annually of hydrocarbon-based drycleaning solvents in a drycleaning machine without a solvent reclaimer. (Section 60(e)(10) of the Act)~~

~~11) — \$5,000 for a facility that uses:~~

~~A) — more than 500 gallons but not more than 550 gallons of chlorine-based or green drycleaning solvents annually; or~~

~~B) — more than 2,500 gallons but not more than 2,750 gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer; or~~

~~C) — more than 5,000 gallons but not more than 5,500 gallons annually of hydrocarbon-based drycleaning solvents in a drycleaning machine without a solvent reclaimer. (Section 60(e)(11) of the Act)~~

~~12) — \$5,000 for a facility that uses:~~

~~A) — more than 550 gallons but not more than 600 gallons of chlorine-based or green drycleaning solvents annually; or~~

~~B) — more than 2,750 gallons but not more than 3,000 gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer; or~~

~~C) — more than 5,500 gallons but not more than 6,000 gallons annually of hydrocarbon-based drycleaning solvents in a drycleaning machine without a solvent reclaimer. (Section 60(e)(12) of the Act)~~

~~13) — \$5,000 for a facility that uses:~~

~~A) — more than 600 gallons of chlorine-based or green drycleaning solvents annually; or~~

- ~~B) — more than 3,000 gallons but not more than 3,250 gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer; or~~
- ~~C) — more than 6,000 gallons of hydrocarbon-based drycleaning solvents annually in a drycleaning machine without a solvent reclaimer. (Section 60(c)(13) of the Act)~~
- 14) — \$5,000 for a facility that uses:

 - ~~A) — more than 3,250 gallons but not more than 3,500 gallons annually of hydrocarbon-based solvents in a drycleaning machine with a solvent reclaimer. (Section 60(c)(14) of the Act)~~
 - ~~B) — more than 3,500 gallons but not more than 3,750 gallons annually of hydrocarbon-based solvents used in a drycleaning machine equipped with a solvent reclaimer. (Section 60(c)(15) of the Act)~~
 - ~~C) — more than 3,750 gallons but not more than 4,000 gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer. (Section 60(c)(16) of the Act)~~
- 15) — \$5,000 for a facility that uses more than 4,000 gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer. (Section 60(c)(17) of the Act)
- 16) — If an applicant submits a license application to operate a facility beginning during a license year, the license fee for the first year shall be prorated as follows:

 - A) — For a license with an effective date on or after January 1 and before April 1, 100% of the fee is required.
 - B) — For a license with an effective date on or after April 1 and before July 1, 75% of the fee is required.
 - C) — For a license with an effective date on or after July 1 and before October 1, 50% of the fee is required.
 - D) — For a license with an effective date on or after October 1 and before January 1 of the following year, 25% of the fee is required.
- d) — *For purposes of this Section, the quantity of drycleaning solvents used annually shall be determined as follows:*

- 1) ~~*In the case of an initial applicant, the quantity of drycleaning solvents that the applicant estimates will be used during his or her initial license year. A fee assessed under this subsection (d)(1) is subject to audited adjustment for that year.*~~
- 2) ~~*In the case of a renewal applicant, the quantity of drycleaning solvents actually purchased in the preceding license year. (Section 60(c) of the Act)*~~
- 3) ~~*In the case of an applicant who uses both chlorine-based and hydrocarbon-based solvents, the quantity of drycleaning solvents used annually shall be determined as follows:*~~
 - A) ~~*using a multiplier of 10 for chlorine-based drycleaning solvents to determine an equivalent value based upon one gallon of chlorine-based drycleaning solvents having an equivalent value of 10 gallons of hydrocarbon-based drycleaning solvents for facilities not using a drycleaning machine equipped with a solvent reclaimer.*~~
 - B) ~~*using a multiplier of 5 for chlorine-based drycleaning solvents to determine an equivalent value based upon one gallon of chlorine-based drycleaning solvents having an equivalent value of 5 gallons of hydrocarbon-based drycleaning solvents for facilities using a drycleaning machine equipped with a solvent reclaimer.*~~
- 4) ~~*In the case of an applicant who uses hydrocarbon-based solvents at a facility that has both drycleaning machines with and without a solvent reclaimer, the total usage will be determined by applying the number of drycleaning machines with a solvent reclaimer to the total number of drycleaning machines at the facility to arrive at a percentage of drycleaning machines with a solvent reclaimer. This percentage will be applied to the total gallons of hydrocarbon-based solvent used and multiplied by a factor of 2 to convert the gallonage to the equivalent of a drycleaning machine without a solvent reclaimer.*~~
- e) ~~*The Council may adjust licensing fees annually based on the change in the published Consumer Price Index — All Urban Consumers, U.S. city average, all items (CPI-U) for the 12 months preceding the month the Council adjusts the licensing fee or as otherwise determined by the Council. (Section 60(c) of the Act)*~~
- f) ~~*A license issued under this Section shall expire one year after the date of issuance and may be renewed on reapplication to the Council and submission of proof of payment of the appropriate fee to the Department of Revenue in accordance with subsections (b) and (c). At least 30 days before payment of a renewal licensing fee is due, the Council shall attempt to:*~~

- 1) ~~notify the operator of each licensed drycleaning facility concerning the requirements of this Section; and~~
- 2) ~~submit a license fee payment form to the licensed operator of each drycleaning facility. (Section 60(d) of the Act)~~
- g) ~~Any person who violates Section 60(a) of the Act by failing to pay the license fee when due may be assessed a civil penalty of \$5 per day for each day after the license fee is due and until the license fee is paid. The penalty shall be effective for license fees due on or after July 1, 1999 and before June 30, 2011. For license fees due on or after July 1, 2011, any person who violates Section 60 (a) of the Act by failing to pay the license fee when due may be assessed a civil penalty, beginning on the 31st day after the license fee is due, in the following amounts: beginning on the 31st day after the license fee is due and until the 60th day after which the license fee is due, \$3 for each day during which the license fee is not paid, and, beginning on the 61st day after the license fee is due and until the license fee is paid, \$5 for each day during which the license fee is not paid. (Section 69(b)(1) of the Act) Penalties totaling \$1,000 or more may be paid in 12 equal monthly installments upon execution by the drycleaner operator of a Council presented agreement. The Council may waive the late payment penalty, taking into consideration the following:~~
 - 1) ~~For calendar years 1998, 1999, and 2000, if the drycleaner owner/operator did not receive one of the initial license notification mailings sent by the Illinois Department of Revenue or the Fund during the period of 1997 through 1999;~~
 - 2) ~~If additional license fees are owed due to the incorrect calculation of the annual solvent usage or purchase information and the understatement of the solvent volume was not significant, and the additional license fee is paid in a reasonable time frame; or~~
 - 3) ~~Other reasonable factors.~~
- h) ~~A license can be transferred from the drycleaning facility operator to a new operator of the same drycleaning facility upon completion of a license transfer form prescribed by the Council and signed by the license holder and transferee. If the drycleaning facility has an active insurance policy issued by the Council, the license can only be transferred if the insurance policy is also transferred.~~
- i) ~~If a drycleaning facility operator terminates the operation of a licensed drycleaning facility at a specific location, the operator can be re-licensed for a new drycleaning facility location without payment of an additional license fee provided the existing drycleaning facility license is terminated.~~
- j) ~~Recordkeeping. Owners and operators of drycleaning facilities must maintain all records required to obtain a license from the Council for a minimum of 3 years~~

~~from the date of initial or renewal licensure. These records include the application, licensing fee payment documentation, solvent invoices, solvent logs, ownership information, late fee payments and any other information that may have been needed to issue and renew the license.~~

~~(Source: Amended at 36 Ill. Reg. 18521, effective December 13, 2012)~~

Section 1500.40 Drycleaner Remedial Account

~~The Council shall have the authority to provide reimbursement to eligible claimants for remedial action associated with the release of drycleaning solvents from the claimant's drycleaning facility. (Section 40(a) of the Act)~~

- ~~a) — The following claimants are eligible for reimbursement from the remedial action account:
 - ~~1) — The owner or operator of an inactive drycleaning facility who was also the owner or operator of that drycleaning facility when it was an active drycleaning facility.~~
 - ~~2) — The owner or operator of an active drycleaning facility which is licensed by the Council under the Drycleaner Environmental Response Trust Fund Act at the time of application for remedial action benefits. (Section 40(b) of the Act)~~~~
- ~~b) — To be eligible for reimbursement, a claimant must demonstrate that drycleaning solvent contaminated soil, groundwater or both exceeds Illinois Environmental Protection Agency (Agency) tiered approach to corrective action objectives and all of the following:
 - ~~1) — The source of the release is from the claimant's drycleaning facility. (Section 40(c)(1) of the Act)~~
 - ~~2) — At the time the release was discovered, the claimant and the drycleaning facility were in compliance with all the Agency reporting and technical operating requirements. (Section 40(c)(2) of the Act)~~
 - ~~3) — The claimant reported the release in a timely manner to the Agency in accordance with the Illinois Emergency Planning and Community Right to Know Act [430 ILCS 100]. (Section 40(c)(3) of the Act)~~
 - ~~4) — The release must have been discovered on or after July 1, 1997 and before July 1, 2006. (Section 40(c)(7) of the Act)~~
 - ~~5) — The claimant must submit a completed application form as provided by the Council (see Section 1500.70(e)) by June 30, 2005. (Section 40(d) of the Act)~~~~

- ~~6) — If the claim is for reimbursement of remedial action expenses at an active drycleaning facility, the claimant must demonstrate continuous financial assurance for environmental liability coverage in the amount of at least \$500,000 beginning the date of award of benefits under the Act or July 1, 2000, whichever is earlier. An uninsured drycleaning facility that has filed an application for insurance with the Fund by January 1, 2004, obtained insurance through that application, and maintained that insurance coverage continuously shall be considered to have conformed with the requirements of this subsection (b)(6). To conform with this requirement, the applicant must pay the equivalent of the total premiums due for the period beginning June 30, 2000 through the date of application plus a 20% penalty of the total premiums due for that period and the claimant must provide to the Council proof of implementation and maintenance of the following pollution prevention measures: (Section 40(e)(5) and (6) of the Act)~~
- ~~A) — Management of all drycleaning solvent wastes in accordance with applicable State waste management laws and rules in accordance with the Environmental Protection Act [415 ILCS 5] and 35 Ill. Adm. Code 722. (Section 40(e)(5)(A) of the Act)~~
- ~~B) — A prohibition on the discharge of wastewater from drycleaning machines or of drycleaning solvent from drycleaning operations to a sanitary sewer or septic tank or to the surface or to groundwater. (Section 40(e)(5)(B) of the Act)~~
- ~~C) — Installation of a containment dike or other containment structure around each machine which is capable of containing a capacity of 110 percent of the drycleaning solvent in the largest tank or vessel in the machine for any leak, spill, or release of drycleaning solvent from that machine.~~
- ~~D) — Installation of a containment dike or other containment structure around each item of equipment or drycleaning area in which any drycleaning solvent is utilized, which shall be capable of containing a capacity of 100 percent of the drycleaning solvent capacity of each item of equipment or area for any leak, spill, or release of drycleaning solvent from that item. (Section 40(e)(5)(C)(I) of the Act)~~
- ~~E) — Installation of a containment dike or other containment structure around each portable waste container in which any drycleaning solvent is utilized, which shall be capable of containing a capacity of 100 percent of the drycleaning solvent capacity of the largest portable waste container, or at least 10 percent of the total volume of the portable waste containers stored within the containment~~

~~device, whichever is greater, for any leak, spill, or release of drycleaning solvent from that item. The portable waste container and containment dike should be located within the drycleaning facility. If the portable waste container is not located within the drycleaning facility, then the portable waste container and the containment device must be located in a structure designed to prevent unauthorized access and prevent exposure to natural elements and provide safety to human health and the environment. (Section 40(e)(5)(C)(I) of the Act)~~

~~F) — Petroleum underground storage tank systems that are upgraded in accordance with USEPA upgrade standards pursuant to 40 CFR 280 (1998) for the tanks and related piping systems and use a leak detection system approved by USEPA or the Agency are exempt from this secondary containment requirement. (Section 40(e)(5)(C)(I) of the Act)~~

~~G) — All diked floor surfaces on which a drycleaning solvent may leak, spill or otherwise be released must be sealed or otherwise rendered impervious to drycleaning solvents. (Section 40(e)(5)(C)(II) of the Act)~~

~~H) — Chlorine based drycleaning solvents shall be delivered to the drycleaning facility by means of closed, direct coupled delivery and vapor recovery systems. (Section 40(e)(5)(D) of the Act)~~

~~e) — Subject to Fund limitations, eligibility requirements, prioritization and reimbursement limitations, the Council may reimburse up to but not to exceed \$300,000 per active drycleaning facility and \$50,000 per inactive drycleaning facility. (Section 40(f)(1) of the Act)~~

~~d) — An eligible claimant submitting a claim for an active drycleaning facility is responsible for the first \$5,000 of eligible focused site investigation costs and for the first \$15,000 of eligible remedial action costs incurred in connection with the release from the drycleaning facility and is only eligible for reimbursement for costs that exceed those amounts, subject to any other limitations of the Act. An eligible claimant submitting a claim for an active drycleaning facility is responsible for the first \$5,000 of eligible focused site investigation costs and for the first \$10,000 of eligible remedial action costs incurred in connection with the release from the drycleaning facility if the focused site investigation is completed and accepted by the Agency and a remedial action plan has been prepared and submitted to the Agency by January 1, 2008, and is only eligible for reimbursement for costs that exceed those amounts subject to any other limitations of the Act. (Section 40(e)(1) of the Act)~~

~~e) — An eligible claimant submitting a claim for an inactive drycleaning facility is responsible for the first \$10,000 of eligible focused site investigation costs and for~~

~~the first \$15,000 of eligible remedial action costs incurred in connection with the release from that drycleaning facility, and is only eligible for reimbursement for costs that exceed those amounts, subject to any other limitations of the Act. An eligible claimant submitting a claim for an inactive drycleaning facility is responsible for the first \$10,000 of eligible focused site investigation costs and for the first \$10,000 of eligible remedial action costs incurred in connection with the release from that drycleaning facility if the focused site investigation is completed and accepted by the Agency and a remedial action plan has been prepared and submitted to the Agency by January 1, 2008, and is only eligible for reimbursement for costs that exceed those amounts subject to any other limitations of the Act. (Section 40(e)(2) of the Act)~~

f) ~~For the purpose of claimant reimbursement, eligible expenses are limited subject to the following:~~

1) ~~For remedial action activities that occurred on or after July 1, 1999, only those costs that are pre-approved by the Council are eligible for reimbursement unless an emergency exists. In the case of an emergency, the Council may reimburse reasonable expenses for remediation services required to mitigate the emergency conditions.~~

2) ~~For remedial action activities that occurred prior to July 1, 1999, the Council may reimburse costs that the Council determines were reasonable and necessary.~~

3) ~~To be pre-approved for reimbursement, remedial action activities must be required under the site remediation program. Only services required to obtain a no further remediation letter for the drycleaning solvent of concern, based upon continued land use as a drycleaning facility, are reimbursable.~~

4) ~~A contract in which one of the parties to the contract is a claimant, for goods or services that may be payable or reimbursable from the Council, is void and unenforceable unless and until the Council has found that the contract terms are within the range of usual and customary rates for similar or equivalent goods or services within this State and has found that the goods or services are necessary for the claimant to comply with Council standards or with the site remediation program. (Section 40(f)(2) of the Act)~~

5) ~~The Council may require a claimant to obtain and submit 3 bids and may require that the bids contain specific terms and conditions consistent with the requirements of the site remediation program and the site specific characteristics of the drycleaning facility for which budget approval is requested. Approval of a bid will be both price and scope specific. (Section 40(f)(4) of the Act)~~

- 6) ~~If a claimant has pollution liability insurance coverage other than coverage provided by the insurance account under the Act, that coverage shall be primary. Reimbursement from the remedial account shall be limited to the deductible amounts under the primary coverage and the amount that exceeds the policy limits of the primary coverage, subject to the deductible amounts of the Act. If there is a dispute between the claimant and the primary insurance provider, reimbursement from the remedial action account may be made to the claimant after the claimant assigns all of his or her interests in the insurance coverage to the Council. (Section 40(f)(9) of the Act)~~
- 7) ~~Reimbursement of any amount from the Fund for remedial action shall be subject to the Council acquiring by subrogation the rights of any claimant or other person to recover the costs of remedial action for which the Fund has compensated the claimant.~~
- 8) ~~If, for any reason, the Council determines that an excess payment has been paid from the Fund, the Council may take steps to collect the excess amount.~~
- 9) ~~Cost recovery; enforcement.~~
- A) ~~The Council may seek recovery from a potentially responsible party liable for a release that is the subject of a remedial action and for which the Fund has expended moneys for remedial action. The amount of recovery sought by the Council shall be equal to all moneys expended by the Fund for and in connection with the remediation, including but not limited to reasonable attorneys' fees and costs of litigation expended by the Fund in connection with the release. (Section 50(a) of the Act)~~
- B) ~~Except as provided in subsections (f)(9)(C) and (D):~~
- i) ~~The Council shall not seek recovery for expenses in connection with remedial action for a release from a claimant eligible for reimbursement except for any unpaid portion of the deductible. (Section 50(b)(1) of the Act)~~
- ii) ~~A claimant's liability for a release for which coverage is admitted under the insurance account shall not exceed the amount of the deductible, subject to the limits of insurance coverage. (Section 50(b)(2) of the Act)~~
- C) ~~Notwithstanding subsection (f)(9)(B), the liability of a claimant to the Fund shall be the total costs of remedial action incurred by the Fund, as specified in subsection (f)(9)(A), if the claimant has not~~

~~complied with the Environmental Protection Act [415 ILCS 5] and its rules or with the Act and its rules. (Section 50(e) of the Act)~~

~~D) — Notwithstanding subsection (f)(9)(B), the liability of a claimant to the Fund shall be the total costs of remedial action incurred by the Fund, as specified in subsection (f)(9)(A), if the claimant received reimbursement from the Fund through misrepresentation or fraud, and the claimant shall be liable for the amount of the reimbursement. (Section 50(d) of the Act)~~

~~E) — Upon reimbursement by the Fund for remedial action under the Act, the rights of the claimant to recover payment from a potentially responsible party are assumed by the Council to the extent the remedial action was paid by the Fund. A claimant is precluded from receiving double compensation for the same injury. A claimant may elect to permit the Council to pursue the claimant's cause of action for an injury not compensated by the Fund against a potentially responsible party, provided the Attorney General or his or her designee determines the representation would not be a conflict of interest. (Section 50(e) of the Act)~~

~~F) — This subsection (f)(9) does not preclude, limit, or in any way affect any of the provisions of or causes of action pursuant to Section 22.2 of the Environmental Protection Act [415 ILCS 5/22.2]. (Section 50(f) of the Act)~~

10) — Upon receipt of a signed, written request from the claimant and verification that the applicable deductibles have been paid by the claimant, the Council will directly pay to the primary service provider the amount of reimbursement due the claimant from the Fund for remedial action activities. The claimant must submit to the Fund a copy of cancelled checks supporting that the applicable deductibles have been paid, along with a signed, written statement from the primary service provider verifying the applicable deductibles have been paid. This request will remain in effect until:

A) — it is rescinded in writing by the claimant; or

B) — the Fund has reimbursed the maximum benefit allowed; or

C) — the claim is closed and the Fund has reimbursed the total amount approved for remedial action activities performed at the facility.

11) — Upon enrollment in the Agency's site remediation program and receipt of a signed, written request from the claimant, the Fund may pay the Agency directly, on eligible claims, the cost incurred by the Agency in its

oversight of the drycleaning facility with respect to which the claimant obtained a No Further Remediation letter. This request will remain in effect until:

- A) ~~the Fund has reimbursed the maximum benefit allowed; or~~
 - B) ~~the claim is no longer eligible for benefits from the Fund; or~~
 - C) ~~the facility has completed the project with the Agency and all related oversight costs have been paid in full to the Agency.~~
- g) ~~Prioritization based upon Fund limitations.~~
- 1) ~~The liability of the Fund is further limited by the monies made available to the Fund, and no remedy shall be provided that would require the Fund to exceed its then current funding limitations to satisfy an award or that would restrict the availability of monies for higher priority sites. *The Council may prioritize the expenditure of funds from the remedial action account whenever it determines that there are not sufficient funds to settle all current claims. In prioritizing, the Council may consider the following:*~~
 - A) ~~*The degree to which human health is affected by the exposure posed by the release (Section 25(c)(1) of the Act);*~~
 - B) ~~*The reduction of risk to human health derived from remedial action compared to the cost of the remedial action (Section 25(c)(2) of the Act);*~~
 - C) ~~*The present and planned uses of the impacted property (Section 25(c)(3) of the Act).*~~
 - 2) ~~If the Council determines that there are not sufficient funds to settle all current claims and that prioritization is necessary, the Council will provide notice to all eligible claimants of the need for prioritization and the prioritization schedule. The Council may designate cash reserves to pay for focused site investigations performed through June 30, 2006 and to pay for unknown remediation costs associated with claims that have been prioritized. The Council shall designate funding up to \$800,000 per year for 3 consecutive years to complete the focused site investigation at eligible drycleaning facilities that should be able to obtain a No Further Remediation letter from the Agency using institutional controls with minimal funding. The initial claim prioritization will include all eligible claims as of the prioritization date set by the Council. Subsequent claim prioritizations will include all eligible claims as of the prioritization date set by the Council, excluding all claims that have previously been prioritized. All claims in the initial prioritization must be funded before~~

~~conducting subsequent prioritizations. This funding methodology will apply to all subsequent prioritizations.~~

~~3) The prioritization schedule is as follows:~~

- ~~A) First priority will be the abatement of emergency conditions that present an immediate threat to human health and safety, such as explosive vapors in basements or utility conduits and migration of free products into the water supply line or to the off site property.~~
- ~~B) Second priority will be the drycleaning facilities located in a township without a groundwater ordinance and when the drycleaning solvent contamination of soil and groundwater of such facilities is likely to cause an immediate adverse effect on human health by contaminating potable water resources.~~
- ~~C) Third priority will be the drycleaning facilities with drycleaning solvent contaminants of soil and groundwater where migration of these contaminants to neighboring properties seems imminent or immediate, which can result in more costly and complicated remediations in the future.~~
- ~~D) Fourth priority will be drycleaning facilities at which soil and/or groundwater contamination is at concentration higher than soil saturation limits of drycleaning solvents, according to TACO regulations of the Agency. Active remediation is required to address free product drycleaning solvent contamination.~~
- ~~E) Fifth priority will be the drycleaning facilities in which soil and/or groundwater contamination is higher than the TACO Tier II level but less than the TACO soil saturation limit. Active remediation may be required or a No Further Remediation letter may be achieved through installation of an engineering barrier and/or through the use of institutional controls.~~
- ~~F) When the Council determines it necessary to prioritize the claims, each individual claim will be ranked using the following numerical ranking system:~~

$$\text{Ranking Score} = (S1 \times 20) + (S2 \times 10) + (S3 \times 8) + (S4 \times 6) + (S5 \times 4) + (S6 \times 2)$$

~~Where:~~

~~S1 = Emergency condition~~

~~S2 = Potable water resources contamination~~

- S3 = ~~Migration of contaminants through groundwater or through soil/rock fractures to the neighboring properties~~
- S4 = ~~Facilities with free product solvents~~
- S5 = ~~Facilities with higher than the TACO Tier II level of solvent contamination~~
- S6 = ~~Facilities with less than the TACO Tier II level of solvent contamination~~

i) ~~Emergency condition (S1)
Toxic fumes or explosion possibility, i.e., free product migration, etc.~~

~~Points: -5~~

ii) ~~Potable water resources contamination (S2)
Imminent or immediate risk to public water resources such as public wells, rivers, and surface water reservoirs and lakes~~

Distance	Points
Within 500 feet	5
Within ¼ mile	4
Within ½ mile	3
Within 1 mile	2
Within 1½ miles	1

iii) ~~Migration of contaminants with groundwater or through soil/rock fractures to the neighboring properties (S3)
Time period for the migration of contaminants to the neighboring property given seepage velocity of groundwater and size and location of contamination plume~~

Time	Points
Within 6 months	5
Within 1 year	4
Within 1½ years	3
Within 2 years	2
Within 2½ years	1

iv) ~~Facilities with free product solvents (S4)~~

~~The soil at the facility is contaminated with drycleaning solvent higher than TACO soil saturation limits (i.e., PCE > 240 ppm and TCE > 1300 ppm) and/or free product was discovered in on-site wells~~

Groundwater Ordinance	Points
Rejected or not available	5
Only approved by the township	4
Approved by the Agency and township	3

- ~~v) Facilities with higher than the TACO Tier II level of solvent contamination (S5)
Facilities with higher than the TACO Tier II level of solvent contamination but less than soil saturation limits~~

Groundwater Ordinance	Points
Rejected or not available	5
Only approved by the township	4
Approved by the Agency and township	3

- ~~vi) Facilities with less than the TACO Tier II level of solvent contamination (S6)
Facilities with higher than the TACO Tier I level but less than Tier II level of solvent contamination (i.e., Tier I for PCE & TCE ≥ 60 ppb for Class I and 300 ppb for Class II)~~

Groundwater Ordinance	Points
Rejected or not available	5
Only approved by the township	4
Approved by the Agency and township	3

- ~~G) The highest ranked claims will receive priority funding, subject to an analysis of the claimant's ability to pay for remediation costs that are anticipated to exceed the Fund's maximum benefit cap.~~

~~4) Ability to Pay Remediation Costs~~

- ~~A) The final step in the prioritization process is to analyze each claimant's ability to pay for remedial action costs that are anticipated to exceed the Fund's maximum benefit cap for the facility. This analysis will be done at the completion of the remedial action plan or, in the case of substantial soil and~~

groundwater contamination, at the completion of the focused site investigation.

- B) — If it is apparent that the cost of remedial action will exceed the benefits available to an eligible drycleaning facility, the Administrator will contact the claimant and ask that the claimant respond in writing as to whether it has the financial resources and is willing to expend those resources to remediate the facility.
 - C) — If the claimant states that it chooses to remediate the facility, the following mechanisms would be deemed acceptable in order to ensure that the claimant has the necessary resources to complete the remedial action once the Fund's maximum benefits have been expended:
 - i) — Escrow 100% of the estimated remedial action costs that will exceed the Fund's remedial benefit cap. Cash or cash equivalents, such as a certificate of deposit, marketable bonds, etc., would be acceptable for escrow; or
 - ii) — A letter of credit from a federally insured financial institution for 100% of the estimated remedial action costs that will exceed the Fund's remedial benefit cap; or
 - iii) — Personal or corporate guarantees for 100% of the estimated cleanup costs that will exceed the Fund's remedial benefit cap. The guarantees would need to be collateralized by liquid assets.
 - D) — Any eligible claimant who determines that it has neither the financial resources nor the desire to spend its resources on remediation of the facility will be moved to a new and separate prioritization pool. Funding for these claims will only be made available once the cleanups have been completed on all of the other eligible claims that do not exercise these funding limitations.
- 5) — Once a claim has been prioritized, it cannot be removed from the prioritized listing unless the claim becomes ineligible for benefits from the Fund or the claimant refuses to remediate the facility in a timely manner.
- 6) — If the claimant does not obtain and submit to the Council cost proposals for beginning the remedial action process within 120 days after being notified that his/her remedial claim has been prioritized for funding, the claim will be removed from the prioritization list and the next highest ranked claim will be added to the list. Any claim removed from the prioritization list due to non-timely remedial action by the claimant will be included in the next prioritization pool.

- ~~h) Remedial claim benefits for a specific drycleaning facility can be transferred to a successor drycleaning facility operator or owner upon execution of a remedial benefits transfer form prescribed by the Council and signed by the original claimant and the successor claimant and approved by the Council.~~
- ~~i) Recordkeeping.~~
- ~~1) Owners and operators that submit a report, plan, budget, application for payment or any other data or document under this Part must maintain all books, records, documents and other evidence directly pertinent to the report, plan, budget, application for payment, data or document, including but not limited to all financial information and data used in the preparation or support of applications for payment. All books, records, documents and other evidence must be maintained in accordance with accepted business practices and appropriate accounting procedures and practices.~~
- ~~2) Owners or operators must maintain the books, records, documents and other evidence set forth in subsection (i)(1) of this Section and make them available to the Council until the latest of the following:~~
- ~~A) The expiration of 3 years after the date the Agency issues a No Further Remediation letter;~~
- ~~B) For books, records, documents or other evidence relating to an appeal, litigation or other dispute or claim, the expiration of 3 years after the date of the final disposition of the appeal, litigation or other dispute or claim; or~~
- ~~C) The expiration of any other applicable record retention period.~~
- ~~j) *Effective January 1, 2012, an active drycleaning facility that has previously received or is currently receiving reimbursement for the costs of a remedial action, as defined in the Act, shall maintain continuous financial assurance for environmental liability coverage in the amount of at least \$500,000 until the earlier of January 1, 2020 or the date the Council determines the drycleaning facility is an inactive drycleaning facility. Failure to comply with this requirement will result in the revocation of the drycleaning facility's existing license and in the inability of the drycleaning facility to obtain or renew a license under Section 60 of the Act. (Section 40(j) of the Act).*~~

~~(Source: Amended at 36 Ill. Reg. 18521, effective December 13, 2012)~~

~~**Section 1500.50 Drycleaner Facility Insurance Account**~~

The owner or operator of an active drycleaning facility shall be eligible for up to \$500,000 financial assurance per drycleaning facility from the Council, subject to the following limitations:

- a) ~~To apply for financial assurance coverage, the owner or operator of an active drycleaning facility must submit a completed application provided by the Council (see Section 1500.70(b)). The Council will not determine who must submit the application. Any insurance policy issued must identify both the owner and the operator and both will be named insureds.~~
- b) ~~Prior to the submission of an insurance application and no later than June 30, 2006 for a drycleaning facility that is active on June 30, 2006, an applicant must have a focused site investigation completed that is designed to identify soil and groundwater contamination resulting from the release of drycleaning solvents at the facility based upon the continued use of the facility as a drycleaning facility, consistent with 35 Ill. Adm. Code 740.430 and 435.~~
- e) ~~The drycleaning facility is participating in and meets all requirements of a drycleaning compliance program approved by the Council. (Section 45(d)(2) of the Act)~~
- d) Applications must include the annual premium for financial assurance coverage as follows:
 - 1) ~~For the year July 1, 1999 through June 30, 2000, \$250 per drycleaning facility (Section 45(e)(1) of the Act);~~
 - 2) ~~For the year July 1, 2000 through June 30, 2001, \$375 per drycleaning facility (Section 45(e)(2) of the Act);~~
 - 3) ~~For the year July 1, 2001 through June 30, 2002, \$500 per drycleaning facility (Section 45(e)(3) of the Act);~~
 - 4) ~~For the year July 1, 2002 through June 30, 2003, \$625 per drycleaning facility (Section 45(e)(4) of the Act);~~
 - 5) ~~For subsequent years, the applicant applying for coverage shall pay an annual actuarially sound insurance premium as determined by the Council. The Council shall take into consideration risk factor adjustments to reflect the range of risk presented by:~~
 - A) ~~the type of drycleaning system~~
 - B) ~~the type of monitoring system~~
 - C) ~~drycleaning volume~~

- ~~D) — *risk management practices.* (Section 45(e)(5) of the Act)~~
- ~~e) — *If coverage is purchased for any part of a year, the purchaser shall pay the full annual premium for that year. The insurance premium is fully earned upon issuance of the insurance policy.* (Section 45(f) of the Act) The insurance premium may be paid in semiannual installments for policies issued on or after June 30, 2003.~~
- ~~f) — All insurance policies shall include a *\$10,000 deductible.* (Section 45(g) of the Act)~~
- ~~g) — *Coverage shall be limited to remedial action costs associated with soil and groundwater contamination resulting from a release of drycleaning solvent at an insured drycleaning facility including third party liability for soil and groundwater contamination,* consistent with the terms of the Council's insurance policy. (Section 45(e) of the Act)~~
- ~~h) — *Coverage is not provided for a release that occurred before the date of coverage* (Section 45(e) of the Act). It is the responsibility of the insured to prove the release occurred after the date of coverage.~~
- ~~i) — The Council does not have the duty or obligation to defend a claim made against a named insured listed on a Council issued insurance policy.~~
- ~~j) — If a Council insured drycleaning facility ceases drycleaning operations during the policy period, coverage shall automatically cancel 60 days after the last day of active drycleaning operations at the facility. No cancellation notice need be issued by the Council to effect this cancellation.~~
- ~~k) — Except as noted in subsection (j), an insurance policy issued by the Council may be cancelled by mailing or delivering to the first named insured listed on the declarations page of the insurance policy written notice of cancellation at least:~~
- ~~1) — Ten days before the effective date of cancellation if the Council cancels for misrepresentation; or~~
 - ~~2) — Thirty days before the effective date of cancellation if the Council cancels for non-payment of premiums; or~~
 - ~~3) — Sixty days before the effective date of cancellation if the Council cancels for any other reason.~~
- ~~l) — If the insurance policy issued by the Council is terminated either for failure to meet the underwriting requirements or for non-payment of the premiums, the notice of cancellation *must include instructions on how to seek reinstatement of coverage, as well as any information concerning any premiums or penalties that*~~

~~may be due. (Section 45(e-6) of the Act) A copy of the Council's appeal procedures will be included as part of the cancellation notification.~~

- ~~m) — Insurance coverage issued under this Section shall expire one year after the date of issuance unless cancelled in accordance with subsection (j) or (k) and may be renewed on reapplication to the Council and submission of the appropriate premium in accordance with subsection (d). At least 30 days before the insurance policy is to expire, the Council will mail a renewal application and premium billing notice to the address of the first named insured on the policy. Failure to complete the renewal application and pay the appropriate premium shall result in expiration of the insurance policy.~~
- ~~n) — An insurance policy issued by the Council for a specific drycleaning facility location can be transferred to a successor drycleaning facility operator or owner upon execution of a policy transfer form prescribed by the Council and signed by the policy holder and transferee. The insurance policy cannot be transferred unless the drycleaning facility license is also transferred.~~
- ~~e) — Settlement of a Claim~~
 - ~~1) — A notice of a release of drycleaning solvent must be made to the Council within 24 hours after the release. A notice of claim must be submitted in writing to the Council as soon as is reasonably possible after a notice of a release of drycleaning solvent has been reported to the Council.~~
 - ~~2) — To be eligible for reimbursement, a claimant must demonstrate that drycleaning solvent contaminated soil, groundwater or both exceeds Agency tiered approach to corrective action objectives.~~
 - ~~3) — For purposes of claimant reimbursement, eligible expenses are limited to the following:
 - ~~A) — Only costs that are pre-approved by the Council are eligible for reimbursement unless an emergency exists. In the case of an emergency, the Council may reimburse reasonable expenses for remediation services required to mitigate the emergency conditions.~~
 - ~~B) — To be pre-approved for reimbursement, remedial action activities must be required under the site remediation program. Only services required to obtain a No Further Remediation letter for the drycleaning solvent of concern, based upon continued land use as a drycleaning facility, are reimbursable.~~~~
 - ~~4) — If, for any reason, the Council determines that an excess payment has been paid from the Fund, the Council may take steps to collect the excess amount.~~

- 5) ~~Upon receipt of a signed, written request from the claimant and verification that the applicable deductibles have been paid by the claimant, the Council will pay directly to the primary service provider the amount of reimbursement due the claimant from the Fund for remedial action activities. The claimant must submit to the Council a copy of cancelled checks supporting that the applicable deductibles have been paid, along with a signed, written statement from the primary service provider verifying the applicable deductibles have been paid. This request will remain in effect until:~~
- ~~A) it is rescinded in writing by the claimant; or~~
 - ~~B) the Fund has reimbursed the maximum benefit allowed; or~~
 - ~~C) the claim is closed and the Fund has reimbursed the total amount approved for remedial action activities performed at the facility.~~
- 6) ~~Upon enrollment in the Agency's site remediation program and receipt of a signed, written request from the claimant, the Fund may pay the Agency directly, on eligible claims, the cost incurred by the Agency in its oversight of the drycleaning facility with respect to which the claimant obtained a No Further Remediation letter. This request will remain in effect until:~~
- ~~A) the Fund has reimbursed the maximum benefit allowed; or~~
 - ~~B) the claim is no longer eligible for benefits from the Fund; or~~
 - ~~C) the facility has completed the project with the Agency and all related oversight costs have been paid in full to the Agency.~~
- 7) ~~Third party claims will be settled in accordance with the terms of the insurance policy.~~
- p) ~~Recordkeeping. Owners and operators of drycleaning facilities must maintain all records required to obtain an insurance policy from the Fund for a minimum of 3 years from each initial issuance and each policy renewal. These records include the application, insurance fees, repair and maintenance logs, compliance program participation certificates, continuing education credits, site inspection reports, ownership information and any other information that may have been needed to issue and renew the insurance coverage. Owners and operators must also maintain records of each repair performed on the drycleaning machine for the remaining operating life of the drycleaning machine. For regulated underground storage tanks at drycleaning facilities, records must be retained as required by 41 Ill. Adm. Code 170, Subpart B (Underground Storage Tanks – Technical Requirements).~~

(Source: ~~Amended at 39 Ill. Reg. 5775, effective April 8, 2015~~)

~~Section 1500.55 Drycleaning Solvent Tax~~

- a) ~~On or after January 1, 1998, a tax is imposed on the use of a drycleaning solvent by a person engaged in the business of operating a drycleaning facility in this State at the rate of:~~
- 1) ~~\$10 per gallon of perchloroethylene or other chlorinated drycleaning solvent used in drycleaning operations;~~
 - 2) ~~\$2 per gallon of petroleum-based drycleaning solvent; and~~
 - 3) ~~\$1.75 per gallon of green solvents, unless the green solvent is used at a virgin facility, in which case the rate is \$.35 per gallon. All drycleaning solvents shall be considered chlorinated solvents unless the Council determines that the solvents are petroleum-based solvents or green solvents. (Section 65(a) of the Act)~~
- b) ~~In determining if a drycleaning solvent is a green solvent, the manufacturer and/or distributor of the solvent must present to the Council the solvent's material safety data sheet, the material safety data sheet of the detergents used in conjunction with the solvent, and such other information the Council deems necessary to determine if the solvent should be classified as a green solvent.~~
- c) ~~In accordance with this Section, the Council has determined the following solvents should be classified as a green solvent:~~
- 1) ~~Carbon Dioxide (CO₂)~~
 - 2) ~~Propylene Glycol Ether DPnB~~
 - 3) ~~Green Earth~~
- d) ~~On or before the 25th day of the 1st month following the end of the calendar quarter, a seller of drycleaning solvents who has collected a tax pursuant to the Act during the previous calendar quarter, or a purchaser or end user of drycleaning solvents required to submit the tax directly to the Department, shall file a DS-1 Form and DS-7 Form (prescribed by the Department of Revenue) with the Department of Revenue. The Department of Revenue shall report quarterly to the Council the volume of drycleaning solvent purchased for the quarter by each licensed drycleaner. Each seller of drycleaning solvent maintaining a place of business in this State who is required or authorized to collect the tax imposed by the Act shall pay to the Department the amount of the tax at the time when he or she is required to file his or her return for the period during which the tax was collected. Purchasers or end users remitting the tax directly to the Department shall file a DS-1 Form with the Department of Revenue and pay the tax so~~

~~incurred by the purchaser or end user during the preceding calendar quarter. Except as provided in this Section, the seller of drycleaning solvents filing the return under this Section shall, at the time of filing the return, pay to the Department the amount of tax imposed by the Act less a discount of 1.75%, or \$5 per calendar year, whichever is greater. Failure to timely file the returns and provide to the Department the data requested under the Act will result in disallowance of the reimbursement discount. (Section 65(f) of the Act) Failure to timely file the returns and provide the required information requested by the Department of Revenue on the DS-1 Form or the DS-7 Form or failure to properly and correctly complete the returns and all supporting schedules will also result in assessment of a civil penalty of \$500 per return.~~

- e) ~~On and after January 1, 1998, no person shall knowingly sell or transfer drycleaning solvent to an operator of a drycleaning facility that is not licensed by the Council under Section 60 of the Act. (Section 65(h) of the Act) Any person who violates Section 65(d) of the Act by providing a false certification or Section 65(h) of the Act by selling or delivering drycleaning solvent to an unlicensed drycleaner will be assessed a \$500 civil penalty for the first violation and a \$5,000 civil penalty for the second and all subsequent violations. (Section 69(b)(2) of the Act)~~

~~AGENCY NOTE: It is the Council's intent that the civil penalty authorized under 415 ILCS 135/65(b)(2) be set at the maximum allowed to discourage the sale and distribution of drycleaning solvent to unlicensed drycleaners. In the event assessed civil penalties are litigated, the Council understands the courts may make other determinations as to the amount of the civil penalties imposed.~~

- f) ~~On or after January 1, 1998, no person shall engage in the business of selling drycleaning solvents in this State without a certificate of registration issued by the Department of Revenue. (Section 67 of the Act) Any person who violates Section 67 of the Act shall be liable for a civil penalty of \$100 per day for each day the person is not registered to sell drycleaning solvents. (Section 69(b)(3) of the Act)~~

~~(Source: Amended at 36 Ill. Reg. 18521, effective December 13, 2012)~~

Section 1500.60 Appeals

- a) ~~Only a person who is the owner or operator of a drycleaning facility as defined by the Act or a person who engages in the business of selling drycleaning solvents as defined by the Act shall have standing to appeal final decisions under the Act. Any written decision issued by the Administrator of the Council shall be considered a final decision. Any written decision issued by the Administrator may be appealed to the Council. Any decision by the Council may be appealed to the Council's administrative law judge (see subsection (h)). Any decision not timely appealed shall become a final administrative decision without the necessity of a final administrative decision being issued and shall be deemed to be a final administrative decision. (Section 20(g) of the Act)~~

- b) ~~The person who has standing to appeal final decisions under the Act shall notify the Administrator in writing of his/her intention to appeal a decision of the Administrator within 60 days after receipt of the written action that is to be appealed.~~
- e) ~~The Administrator will review the appeal and respond in writing to the person who has standing to appeal final decisions under the Act within 30 days after receipt of the appeal.~~
- d) ~~If the person who has standing to appeal final decisions under the Act still disagrees with the Administrator's decision, that person may request further review by sending to the Council a written appeal within 60 days after the written action of the Administrator that is to be appealed. The notice shall be delivered to the Administrator for delivery to the Council. *Notice of the hearing shall be given not less than 7 days before the day fixed for the hearing.* (Section 20(g) of the Act)~~
- e) ~~The person who has standing to appeal final decisions under the Act shall notify the Council of his/her intention to appeal the Council decision within 60 days after receipt of the written action of the Council that is to be appealed.~~
- f) ~~The Council shall deliver notice of the appeal to the person who has standing to appeal final decisions under the Act and the Council's administrative law judge within 30 days after receipt of notice of the appeal by that person.~~
- g) ~~The appeal shall be with an administrative law judge as determined by the Council. The administrative law judge may be the Council's legal counsel or an attorney licensed to practice law in Illinois. The administrative law judge may be disqualified from hearing the appeal for bias or conflict of interest. An adverse ruling, in and of itself, shall not constitute bias or conflict of interest.~~
- h) ~~A hearing with the administrative law judge shall be held within 180 days after the filing of the notice of the appeal. Notice of the hearing shall be given not less than 7 days before the day fixed for the hearing.~~
- i) ~~A final decision by the administrative law judge shall be issued no later than 120 days following the close of the hearing before the administrative law judge.~~
- j) ~~The time restrictions in this appeal procedure may be waived by mutual agreement of the parties.~~
- k) ~~The decision of the administrative law judge shall be subject to judicial review in accordance with the Administrative Review Law [735 ILCS 5/Art. III].~~

- ~~l) Unless displaced by a particular provision of this Section, the Administrative Hearings Article of the Illinois Administrative Procedure Act [5 ILCS 100/Art. 10] shall apply.~~
- ~~m) Recordkeeping. Books, records, documents or other evidence relating to an appeal, litigation or other dispute must be maintained for 3 years after the expiration date of the final disposition of the appeal, litigation or other dispute.~~

~~(Source: Amended at 35 Ill. Reg. 1619, effective January 18, 2011)~~

Section 1500.70 Forms

- ~~a) License Application Form
 - ~~1) The following is a summary of information that shall be completed on the License Application Form to receive a license certificate.
 - ~~A) Drycleaning facility name, address, contact person, phone number and date facility began drycleaning operations.~~
 - ~~B) Drycleaner operator information, including name, mailing address, contact person, phone number, type of legal entity (i.e., sole proprietorship), corporation, partnership, Federal ID or social security number, Illinois Business Tax ID number.~~
 - ~~C) Information pertaining to the owner of the real estate, including owner name, mailing address, contact person, phone number, type of legal entity, Federal ID or social security number.~~
 - ~~D) Information pertaining to the annual fee involving the quantity of drycleaning solvents purchased for the preceding year or estimated to be used in the current year if it is a new drycleaning facility.~~
 - ~~E) Information regarding the drycleaning solvent supplier, including name of supplier, contact person, phone number, mailing address, Illinois Business Tax ID number.~~~~
 - ~~2) The license form must be signed by the applicant and returned with the appropriate application form and proof of payment of license fee in order to receive a license from the Drycleaner Environmental Response Trust Fund Council of Illinois.~~~~
- ~~b) Insurance Application Form. The following is general information that must be completed on an insurance application form in order to receive pollution liability insurance coverage from the Fund.~~

- 1) ~~Facility name, address, contact person, drycleaner license number and phone number.~~
- 2) ~~Operator name, mailing address, contact person, legal entity, type of legal entity, whether the operator is the owner of the land, buildings or both.~~
- 3) ~~Owner information, including name, mailing address, contact person, type of legal entity.~~
- 4) ~~Where correspondence regarding this application should be sent.~~
- 5) ~~Information on the mortgagee, including name, mailing address.~~
- 6) ~~Site specific information such as:~~
 - A) ~~Number of drycleaning units not in use or temporarily out of use at the location.~~
 - B) ~~Site conditions, including distance in feet to the nearest building off premises.~~
 - C) ~~Distance in feet to nearest water well.~~
 - D) ~~Distance in feet to nearest water/sewer main.~~
 - E) ~~Location of the property in terms of residential, commercial or industrial area.~~
 - F) ~~A diagram of the facility showing location of the building, drycleaning units, stored drycleaning solvents, stored hazardous waste containers, etc., should be listed on the diagram.~~
 - G) ~~What type of hazardous waste generator facility is at this location and if the facility is operating in accordance with the requirements for the type of hazardous waste generator facility that is indicated.~~
 - H) ~~Does the facility participate in and meet all the requirements of the Drycleaning Compliance Program approved by the Council. If the answer is yes, the applicant must provide the name of the program and documentation of participation. In addition, the applicant must indicate if the facility is compliant with all the requirements of the Compliance Program.~~
 - I) ~~Does the drycleaning unit have an Illinois EPA air operating permit? If so, the type of permit must be indicated.~~

- 7) ~~Has a site investigation been conducted to identify soil and groundwater contamination of the facility? If it has, a copy of the entire report should be submitted with the application.~~
- 8) ~~An indication of whether the applicant has ever reported a release or spill on this site to the Illinois Emergency Management Agency. If the response is yes, the applicant should explain when, what and the current status of the cleanup. If the response is no, the applicant should indicate if he/she is aware of a release or spill that has occurred at this facility that would impact soil and groundwater.~~
- 9) ~~Specific information on each individual drycleaning unit at the facility, including:
 - A) ~~Date each unit installed.~~
 - B) ~~Was the unit new at installation?~~
 - C) ~~Identification of the type of drycleaning solvent currently used.~~
 - D) ~~Indicate what type of drycleaning unit it is, i.e., dry to dry, transfer, other.~~
 - E) ~~What is the average amount of drycleaning solvent used per month in each unit?~~
 - F) ~~Does the unit have a pollution control mechanism on it? If so, identify what type.~~
 - G) ~~What is the size of each unit, based on pounds of clothes that each unit holds per cycle?~~
 - H) ~~Generation of drycleaning unit.~~~~
- 10) ~~Hazardous Waste
 - A) ~~Does the site maintain drycleaning solvent hazardous waste in approved containers that are labeled hazardous waste and properly dated?~~
 - B) ~~Is wastewater from the drycleaning solvent discharged into a sanitary sewer/septic tank service or groundwater?~~
 - C) ~~Are all drycleaning solvent wastes generated at this facility managed in accordance with applicable State waste management laws and rules in accordance with the Environmental Protection Act [415 ILCS 5] and 35 Ill. Adm. Code 722?~~~~

11) ~~Pollution Prevention Measures~~

- A) ~~Does the unit have a containment dike or structure around each unit for the entire drycleaning area in which any drycleaning solvent is utilized that is capable of containing a spill or leak?~~
- B) ~~Is the surface of the dike floor in which the drycleaning solvent may leak, spill or otherwise be released sealed or impervious?~~
- C) ~~Are regular visual inspections conducted of the unit, solvent containers, waste containers and other areas where the solvent waste is located?~~
- D) ~~Are the repairs done on a timely basis and a log kept of all repairs?~~
- E) ~~Is the drycleaning solvent delivered to the facility by means of a closed direct coupled delivery system?~~

12) ~~An insurance application form must be signed and dated by the applicant.~~

e) ~~Claim Application Form. The following is a summary of information that shall be completed on a claims form to apply for remedial action or insurance benefits.~~

1) ~~Business facility information including:~~

- A) ~~Name and address of property where release occurred and name, address and phone number of person filing claim.~~
- B) ~~Indication of whether the claim is for remedial account program benefits or insurance account program benefits.~~
- C) ~~An insurance policy number, if applicable.~~
- D) ~~The number of drycleaning units at this facility, whether they are still in use, and the drycleaning solvents that were stored in the drycleaning units.~~
- E) ~~Questions as to other types of drycleaning machines, equipment, or underground or aboveground tanks, besides the drycleaning units, that store drycleaning solvent located at this facility that may contain any product that is chlorine or petroleum based.~~
- F) ~~The name of the owner of the land on which the drycleaning units are located.~~
- G) ~~The name of the owner of the facility and drycleaning units.~~

H) ~~The name of the owner and operator of the business at the location, including the length of time the business has been in operation and how long the current operator has operated the business.~~

2) ~~General information about the spill or leak.~~

A) ~~When did the person filing the claim first learn about the spill or leak?~~

B) ~~How was the spill or leak discovered?~~

C) ~~When and how was the problem reported to the Illinois Emergency Management Agency or the Illinois Environmental Protection Agency?~~

D) ~~Information regarding the source of contamination.~~

E) ~~Information regarding an awareness of any person who has suffered bodily injury or property damage as a result of this release.~~

F) ~~Statement regarding whether the contamination has migrated beyond the property.~~

G) ~~Has a site investigation been prepared?~~

H) ~~Have cleanup activities commenced at the site?~~

I) ~~The name of the licensed professional engineer performing remediation on this site, if applicable.~~

3) ~~General Information about other insurance at the facility.~~

A) ~~Whether other insurance specifically providing pollution liability coverage has existed for this property. If the response is yes, provide the name of the company, policy number and a copy of the policy.~~

B) ~~Has the incident been reported to the insurance company?~~

C) ~~Has the person filing the claim requested payment from anyone else for costs associated with the claim? If the response is yes, provide information on the payment request from a third party.~~

d) ~~Claim Reimbursement Form. The following is a summary of general information that shall be completed on the claim reimbursement request form:~~

- 1) ~~Claimant information, including name, address, social security or Federal Tax ID number. In addition, site information regarding where the remedial activities were performed, including site name, physical address and city.~~
- 2) ~~Contractor information in the form of contractor name, address and telephone number.~~
- 3) ~~Remediation activities. An indication of the activities that were completed and the amount being billed at this time.~~
- 4) ~~Reimbursements from other programs. An indication of whether the claimant has applied for reimbursement from any other source for the invoices being submitted with this form.~~
- 5) ~~Original invoices.~~
- 6) ~~A summary of the eligible costs, broken down by cost category, and certification that the information is accurate and complete.~~
- 7) ~~A schedule of detail to support the cost categories reported.~~

~~(Source: Amended at 30 Ill. Reg. 7939, effective April 13, 2006)~~

TITLE 35: ENVIROMENTAL PROTECTION
SUBTITLE N: DRYCLEANING
CHAPTER V: POLLUTION CONTROL BOARD

PART 1501
DRYCLEANER ENVIRONMENTAL RESPONSE
TRUST FUND PROGRAM

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<u>1501.450</u>	<u>Claim Procedures</u>

AUTHORITY: Implementing and authorized by the Drycleaner Environmental Response Trust Fund Act [415 ILCS 135] and Sections 27 & 28 of the Environmental Protection Act [415 ILCS 5/27 & 28].

SOURCE: Adopted in R - at Ill. Reg. , effective .

SUBPART A: GENERAL PROVISIONS

Section 1501.100 Scope and Purpose

The purpose of this Part is to set forth rules for the Agency's administration and implementation of the Drycleaner Environmental Response Trust Fund Act [415 ILCS 135].

(Source: Former Section 1500.10 renumbered to Section 1501.100, and amended at Ill. Reg. , effective .)

Section 1501.110 Applicability

This Part applies to owners and operators of drycleaning facilities, as defined in Section 1501.130.

Section 1501.120 Severability

If any provision of this Part or its application to any person or under any circumstances is adjudged invalid, such adjudication shall not affect the validity of this Part as a whole or of any portion not adjudged invalid.

Section 1501.130 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definition of words or terms in this Part will be the same as that applied to the same words or terms in the Drycleaner Environmental Response Trust Fund Act (415 ILCS 135/1 et. seq.):

"Active drycleaning facility" means a drycleaning facility actively engaged in drycleaning operations and licensed under this Part.

"Agency" means the Illinois Environmental Protection Agency [415 ILCS 135/5].

"Board" means the Illinois Pollution Control Board.

"Chlorine-based solvent" means a drycleaning solvent containing one or more chlorine atoms in its molecular structure.

"Claimant" means an owner or operator of a drycleaning facility who has applied for reimbursement from the remedial account or who has submitted a claim under the insurance account with respect to a release [415 ILCS 135/5].

"Council" means the Drycleaner Environmental Response Trust Fund Council, whose authorities under the DERT Fund Act transferred to the Agency and the Board on July 1, 2020.

"DERT Fund Act" means the Drycleaner Environmental Response Trust Fund Act [415 ILCS 135/5].

"Drycleaner Environmental Response Trust Fund" or "Fund" means the fund created under Section 10 of the DERT Fund Act [415 ILCS 135/5].

"Drycleaning facility" means a facility located in this State that is or has been engaged in drycleaning operations for the general public, other than:

(1) a facility located on a United States military base;

(2) an industrial laundry, commercial laundry, or linen supply facility;

(3) a prison or other penal institution that engages in drycleaning only as part of a Correctional Industries program to provide drycleaning to persons who are incarcerated in a prison or penal institution or to resident patients of a State-operated mental health facility;

(4) a not-for-profit hospital or other health care facility; or

(5) a facility located or formerly located on federal or State property [415 ILCS 135/5].

"Drycleaning machine with a solvent reclaimer" means a drycleaning machine that uses (i) a petroleum-based or hydrocarbon-based solvent and (ii) a drying system in which the drycleaning solvent vapors from the drying process are captured and not emitted into the atmosphere. [415 ILCS 1500/20]

"Drycleaning machine without a solvent reclaimer" means a drycleaning machine that uses (i) a petroleum-based or hydrocarbon-based solvent and (ii) a transfer process in which the garments are cleaned in one machine and then transferred to a dryer that does not recapture the drycleaning solvent remaining in the garments. The dryer emits the solvent vapors directly into the atmosphere. [415 ILCS 1500/20]

"Drycleaning operations" means drycleaning of apparel and household fabrics for the general public, as described in Standard Industrial Classification Industry No. 7215 and

No. 7216 in the Standard Industrial Classification Manual (SIC) by the Technical Committee on Industrial Classification [415 ILCS 135/5].

"Drycleaning solvent" means any and all nonaqueous solvents, including but not limited to a chlorine-based or petroleum-based formulation or product, including green solvents, that are used as a primary cleaning agent in drycleaning operations. [415 ILCS 135/5]

"Emergency" or "emergency action" means a situation or an immediate response to a situation to protect public health or safety. 'Emergency' or 'emergency action' does not mean removal of contaminated soils, recovery of free product, or financial hardship. An 'emergency' or 'emergency action' would normally be expected to be directly related to a sudden event or discovery and would last until the threat to public health or safety is mitigated [415 ILCS 135/5].

"EPAAct" means the Illinois Environmental Protection Act [415 ILCS 5/1 et. seq.].

"Green solvent" means a drycleaning solvent evaluated and classified by the Council or Board as biodegradable and that, if released into the environment, would not require remedial action under State or federal law or regulations.

"Hydrocarbon-based solvent" has the same meaning as the term "petroleum-based solvent."

"Inactive drycleaning facility" means a drycleaning facility that is not being used for drycleaning operations and is not registered under the DERT Fund Act or licensed under Subpart B of this Part [415 ILCS 1500/20].

"No Further Remediation Letter" means a letter provided by the Agency pursuant to Section 58.10 of Title XVII of the EPAAct [415 ILCS 135/5].

"Operator" means a person or entity holding a business license to operate a licensed drycleaning facility or the business operation of which the drycleaning facility is a part [415 ILCS 135/5].

"Owner" means (1) a person who owns or has possession or control of a drycleaning facility at the time a release is discovered, regardless of whether the facility remains in operation or (2) a parent corporation of the person under item (1) of this definition [415 ILCS 135/5].

"Parent corporation" means a business entity or other business arrangement that has elements of common ownership or control or that uses a long-term contractual arrangement with a person to avoid direct responsibility for conditions at a drycleaning facility [415 ILCS 135/5].

"Person" means an individual, trust, firm, joint stock company, corporation, consortium, joint venture, or other commercial entity [415 ILCS 135/5].

“Petroleum-based solvent” means a drycleaning solvent containing a hydrocarbon mixture.

"Program year" means the period beginning on July 1 and ending on the following June 30 [415 ILCS 135/5].

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or dispersing of drycleaning solvents from a drycleaning facility to groundwater, surface water, or subsurface soils [415 ILCS 135/5].

"Remedial action" means activities taken to comply with Sections 58.6 and 58.7 of the Environmental Protection Act and rules adopted by the Board under those Sections [415 ILCS 135/5].

"Service provider" means a consultant, testing laboratory, monitoring well installer, soil boring contractor, other contractor, lender, or any other person who provides a product or service for which a claim for reimbursement has been or will be filed against the Fund, or a subcontractor of such a person [415 ILCS 135/5].

“Site Remediation Program” or “SRP” means Title XVII of the EPAct and rules adopted thereunder.

(Source: Former Section 1500.20 renumbered to Section 1501.130, and amended at Ill. Reg. _____, effective _____.)

Section 1501.140 Incorporations by Reference

None.

Section 1501.150 Limited Liability

- a) The State, the General Revenue Fund, and any other fund of the State, other than the Drycleaner Environmental Response Trust Fund, shall not be liable for a claim or cause of action in connection with a drycleaning facility not owned or operated by the State or an agency of the State. All expenses incurred by the Fund shall be payable solely from the Fund and no liability or obligation shall be imposed upon the State. The State is not liable for a claim presented against the Fund [415 ILCS 135/10].
- b) The liability of the Fund is limited to the extent of coverage provided by the account under which a claim is submitted, subject to the terms and conditions of that coverage. The liability of the Fund is further limited by the moneys made available to the Fund, and no remedy shall be ordered that would require the Fund to exceed its then current funding limitations to satisfy an award or which would restrict the availability of moneys for higher priority sites [415 ILCS 135/10].

- c) *An award or reimbursement made from the Fund under the DERT Fund Act shall be the claimant's exclusive method for the recovery of the costs of drycleaning facility remediation [415 ILCS 135/55].*
- d) *If a person conducts a remedial action activity for a release at a drycleaning facility site, whether or not the person files a claim under the DERT Fund Act or this Part, the claim and remedial action activity conducted are not evidence of liability or an admission of liability for any potential or actual environmental pollution or damage [415 ILCS 135/55].*
- e) *The Fund, including but not limited to insurance coverage offered under the insurance account, is not subject to the provisions of the Illinois Insurance Code. Notwithstanding any other provision of law, the Fund shall not be considered an insurance company or an insurer under the laws of this State and shall not be a member of nor be entitled to a claim against the Illinois Insurance Guaranty Fund [415 ILCS 135/35].*
- f) The limitations contained within Section 58.9 of the EPA Act do not apply to this Part.

Section 1501.160 Recordkeeping and Audits

- a) Owners or operators must maintain all information and data used or necessary to comply with this Part, including but not limited to information and data used in the preparation of or to support all applications, licenses, licensing fee payments, solvent invoices, solvent logs, ownership information, reports, plans, budgets, reimbursement requests, and insurance claims. All information must be maintained at the drycleaning facility or at an Illinois location specified in the owner or operator's license application under Section 1501.210 and in accordance with accepted business practices and appropriate accounting procedures and practices.
- b) The Agency or its duly authorized representatives must have access to the information required to be maintained under this Part, during normal business hours, for the purpose of inspection, audit, and copying. Owners or operators must provide proper facilities for such access, inspection and copying.
- c) Owners or operators must maintain the information set forth in subsection (a) and make such available to the Agency until the later in time of either:
 - 1) The expiration of three (3) years after expiration of the owners' or operators' final annual license;
 - 2) The expiration of three (3) years after expiration of the owners' or operators' final financial insurance for environmental liability;

- 3) The expiration of three (3) years after the date the owner or operator files an Agency issued No Further Remediation Letter under Subpart F of 35 Ill. Adm. Code 740;
- 4) The expiration of three (3) years after the Agency issues approval of the owners' or operators' final remedial action claim;
- 5) The expiration of three (3) years after the Agency issues approval of the owners' or operators' final insurance claim;
- 6) For information relating to an appeal, litigation, or other dispute or legal claim, the expiration of three (3) years after the date of the final disposition of any such appeal, litigation, or other dispute or legal claim;
or
- 7) The expiration of any other applicable record retention period.

Section 1501.170 Agency Authority and Inspections

- a) All of the general powers necessary and convenient to implement and administer the DERT Fund Act are, except as otherwise provided in the DERT Fund Act, hereby vested in and may be exercised by the Agency, including, but not limited to, the powers described in Section 25 of the DERT Fund Act [415 ILCS 135/12].
 - 1) Except as otherwise provided by law, the Agency may inspect any document in the possession of an owner, operator, service provider, or any other person if the document is relevant to a reimbursement claim or insurance claim, or may inspect a drycleaning facility for which a claim for benefits under the DERT Fund Act has been submitted [415 ILCS 135/25(a)(7)].
 - 2) The Agency may, in accordance with constitutional limitations, enter at all reasonable times upon any private or public property for the purpose of inspecting and investigating to ascertain possible violations of the DERT Fund Act, any rule adopted under the DERT Fund Act including this Part, or any order entered pursuant to the DERT Fund Act [415 ILCS 135/25(f)].
- b) Nothing under the DERT Fund Act or this Part shall limit or otherwise impact the authorities granted to the Agency under the EAct or any other authority of the Agency under law or statute, including but not limited to inspection, investigation, and enforcement authorities related to potential violations of the EAct, rules adopted thereunder, or orders entered under the EAct.

Section 1501.180 Penalties

- a) Except as otherwise provided in Section 69 of the DERT Fund Act, any person who violates any provision of the DERT Fund Act, this Part, or any license or registration or term of condition thereof, or that violates any Council, Board, or court order entered under the DERT Fund Act, shall be liable for a civil penalty as provided in Section 69 of the DERT Fund Act [415 ILCS 135/69(a)].
- b) In addition to all other civil and criminal penalties provided by law, any person who knowingly makes to the Agency or Department of Revenue an oral or written statement that is false, fictitious, or fraudulent and that is materially related to or required by the DERT Fund Act or this Part commits a Class 4 felony, and each such statement or writing shall be considered a separate Class 4 felony. A person who, after being convicted under Section 69.5 of the DERT Fund Act, violates that Section a second or subsequent time commits a Class 3 felony. [415 ILCS 135/69.5]
- c) If the Agency becomes aware of a violation of the DERT Fund Act or this Part, it may refer the matter to the Attorney General for recovery of Fund moneys or enforcement as provided within Sections 50, 69, or 69.5 of the DERT Fund Act.
- d) The Agency shall follow the provisions of Section 31 of the EPA Act (415 ILCS 5/31) regarding notice, complaint and hearing. The Agency further may utilize any other statutory authority of the EPA Act to respond to conditions at a drycleaning facility subject to this Part.
- e) The Attorney General may also, at the request of the Agency, or on his or her own motion, institute a civil action for an injunction, prohibitory or mandatory, to restrain violations of the DERT Fund Act, this Part, any license or term of a license, or any Council, Board, or court order entered pursuant to the DERT Fund Act or this Part, or to require other actions as may be necessary to address violations thereof [415 ILCS 135/69].

Section 1501.190 Review of Final Decisions

All final Agency decisions made pursuant to this Part shall be subject to review in the manner provided for the review of permit decisions under Section 40 of the Environmental Protection Act [415 ILCS 135/77(a)].

Section 1501.195 Submissions and Certifications

- a) All submittals to the Agency under this Part must be in the form and in a format prescribed by the Agency.
- b) All submittals must be mailed or delivered electronically if an electronic form and format is prescribed, to an address designated by the Agency. Submittals are

deemed received by the Agency on the date of receipt of such and the Agency's date of receipt shall be conclusive.

- c) All budgets and requests for reimbursement submitted under this Part must contain the following certification from a Licensed Professional Engineer or Licensed Professional Geologist.

I certify under penalty of law that all activities that are the subject of this budget or request for reimbursement were conducted under my supervision or were conducted under the supervision of another Licensed Professional Engineer or Licensed Professional Geologist and reviewed by me; that this budget or request for reimbursement and all attachments were prepared under my supervision; that, to the best of my knowledge and belief, the work described in the budget or request for reimbursement has been completed in accordance with the Drycleaner Environmental Response Trust Fund Act [415 ILCS 135], 35 Ill. Adm. Code 1501, and generally accepted standards and practices of my profession; and that the information presented is accurate and complete. I am aware there are significant penalties for submitting false statements or representations to the Agency, including but not limited to fines, imprisonment, or both as provided in Section 69.5 of the Drycleaner Environmental Response Trust Fund Act [415 ILCS 135/69.5].

SUBPART B: LICENSES

Section 1501.200 General Licensing Provisions

- a) No drycleaning facility in this State shall be operated without a license issued by the Agency for that facility.
- b) License renewal applications should be submitted to the Agency at least thirty (30) calendar days prior to expiration. The owner or operator of a drycleaning facility that is obtaining an initial license for the facility must submit a license application to the Agency and obtain a license prior to the facility commencing operations.
- c) Annual licenses under this Part shall be issued by the Agency for a calendar year. A license shall expire at the end of the calendar year for which it was issued unless renewed for the next calendar year under Section 1501.210.
- d) The Agency may issue an annual license for an active drycleaning facility after processing an applicant's submission of a completed license application and proof of licensing fee payment as specified in Section 1501.210.
- e) If the facility is enrolled in the SRP, all SRP fees due have been paid.

- f) Any of the following may result in the Agency issuing a license revocation:
- 1) Failure of the owner or operator to maintain continuous environmental liability coverage under Section 1501.300(c).
 - 2) The Agency determines that the drycleaning facility is not in compliance with this Part.
- g) License Revocation.
- 1) Prior to revoking a drycleaner license the Agency shall provide written notice of revocation to the owner or operator. The notice shall include the following:
 - A) The reasons for the notice of revocation; and
 - B) Citations to statutory or regulatory provisions upon which the notice of revocation is based.
 - 2) The owner or operator shall have forty-five (45) calendar days from receipt of the notice of revocation to respond in writing. If, after expiration of the response period and review of any response submitted by the owner or operator, the Agency determines revocation is still warranted the Agency shall revoke the license. The revocation shall be provided in writing and include the following:
 - A) The reasons for the license revocation; and
 - B) Citations to statutory or regulatory provisions upon which the license revocation is based.
 - 3) The burden of proof is on the owner or operator in such proceeding.
- h) A license revocation under this Section is effective upon the date of the Agency's letter rendering a final determination on the matter.

Section 1501.210 Application Procedures

- a) All owners or operators seeking or renewing a license under this Part must apply on forms and in a format prescribed by the Agency. Applications must include, but shall not be limited to, the following:
- 1) Proof of payment of the appropriate annual license fee to the Illinois Department of Revenue.
 - 2) A certification by the applicant that:

A) All hazardous waste stored at the drycleaning facility is stored in accordance with all applicable federal and state laws and regulations;

B) All hazardous waste transported from the drycleaning facility is transported in accordance with all applicable federal and state laws and regulations; and

C) The applicant has successfully completed all continuing education requirements adopted by the Board [415 ILCS 135/60(b)].

3) If the owner or operator of the drycleaning facility has previously received or is currently receiving reimbursement from the Fund for the costs of a remedial action, proof of compliance with Section 1501.300(c).

Section 1501.220 Annual License Fee

a) Annual fees shall not be refunded nor prorated. The annual license fees are as follows:

1) One thousand five hundred dollars (\$1,500) for a drycleaning facility that uses:

A) Fifty (50) gallons or less of chlorine-based or green drycleaning solvents annually;

B) Two hundred and fifty (250) or less gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer; or

C) Five hundred (500) gallons or less annually of hydrocarbon-based drycleaning solvents in a drycleaning machine without a solvent reclaimer.

2) Two thousand two hundred and fifty dollars (\$2,250) for a drycleaning facility that uses:

A) more than fifty (50) gallons but not more than one hundred (100) gallons of chlorine-based or green drycleaning solvents annually;

B) more than two hundred and fifty (250) gallons but not more than five hundred (500) gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer; or

C) more than five hundred (500) gallons but not more than one thousand (1,000) gallons annually of hydrocarbon-based

drycleaning solvents in a drycleaning machine without a solvent reclaimer.

- 3) Three thousand dollars (\$3,000) for a drycleaning facility that uses:
 - A) more than one hundred (100) gallons but not more than one hundred and fifty (150) gallons of chlorine-based or green drycleaning solvents annually;
 - B) more than five hundred (500) gallons but not more than seven hundred and fifty (750) gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer; or
 - C) more than one thousand (1,000) gallons but not more than one thousand five hundred (1,500) gallons annually of hydrocarbon-based drycleaning solvents in a drycleaning machine without a solvent reclaimer.

- 4) Three thousand seven hundred and fifty dollars (\$3,750) for a drycleaning facility that uses:
 - A) more than one hundred and fifty (150) gallons but not more than two hundred (200) gallons of chlorine-based or green drycleaning solvents annually;
 - B) more than seven hundred and fifty (750) gallons but not more than 1,000 gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer; or
 - C) more than one thousand five hundred (1,500) gallons but not more than two thousand (2,000) gallons annually of hydrocarbon-based drycleaning solvents in a drycleaning machine without a solvent reclaimer.

- 5) Four thousand five hundred dollars (\$4,500) for a drycleaning facility that uses:
 - A) more than two hundred (200) gallons but not more than two hundred and fifty (250) gallons of chlorine-based or green drycleaning solvents annually;
 - B) more than one thousand (1,000) gallons but not more than one thousand two hundred and fifty (1,250) gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer; or

- C) more than two thousand (2,000) gallons but not more than two thousand five hundred (2,500) gallons annually of hydrocarbon-based drycleaning solvents in a drycleaning machine without a solvent reclaimer.
 - 6) Five thousand dollars (\$5,000) for a drycleaning facility that uses:
 - A) more than two hundred and fifty (250) gallons of chlorine-based or green drycleaning solvents annually;
 - B) more than one thousand two hundred and fifty (1,250) gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer; or
 - C) more than two thousand five hundred (2,500) gallons annually of hydrocarbon-based drycleaning solvents in a drycleaning machine without a solvent reclaimer.
 - 7) Five thousand dollars (\$5,000) for a drycleaning facility that uses more than four thousand (4,000) gallons annually of hydrocarbon-based solvents in a drycleaning machine equipped with a solvent reclaimer.
- b) For purposes of this Section, an owner or operator shall determine the quantity of drycleaning solvents per calendar year as follows:
 - 1) For initial license calendar years, the owner or operator shall estimate the quantity of drycleaning solvents that will be used at the facility during the initial year. A fee assessed under this subsection (b)(1) is subject to audited adjustment if actual drycleaning solvent use for the initial license calendar year is greater than estimated.
 - 2) In the case of renewal, the owner or operator shall determine the quantity of drycleaning solvents used at the drycleaning facility annually based upon the quantity used at the facility during the preceding calendar year.
 - 3) In the case of an owner or operator who uses both chlorine-based and hydrocarbon-based drycleaning solvents at the drycleaning facility, the quantity of drycleaning solvents used at the drycleaning facility annually shall be determined as follows:
 - A) using a multiplier of ten (10) for chlorine-based drycleaning solvents to determine an equivalent value based upon one gallon of chlorine-based drycleaning solvents having an equivalent value of 10 gallons of hydrocarbon-based drycleaning solvents for facilities not using a drycleaning machine equipped with a solvent reclaimer.

- B) using a multiplier of five (5) for chlorine-based drycleaning solvents to determine an equivalent value based upon one gallon of chlorine-based drycleaning solvents having an equivalent value of 5 gallons of hydrocarbon-based drycleaning solvents for facilities using a drycleaning machine equipped with a solvent reclaimer.
- 4) In the case of an owner or operator who uses hydrocarbon-based solvents at a drycleaning facility that has both one or more drycleaning machines with a solvent retainer and one or more drycleaning machines without a solvent reclaimer, the total usage will be determined by applying the number of drycleaning machines with a solvent reclaimer to the total number of drycleaning machines at the facility to arrive at a percentage of drycleaning machines with a solvent reclaimer. This percentage will be applied to the total gallons of hydrocarbon-based solvent used and multiplied by a factor of two (2) to convert the gallonage to the equivalent of a drycleaning machine without a solvent reclaimer.

Section 1501.230 Drycleaning Green Solvent

- a) In determining if a drycleaning solvent is a green solvent, the manufacturer and/or distributor of the solvent must present to the Agency the solvent's material safety data sheet, the material safety data sheet of the detergents used in conjunction with the solvent, and such other information the Agency deems necessary to determine if the solvent should be classified as a green solvent.
- b) Under a request for a solvent to be classified as a green solvent, the Agency shall review the information submitted under this Section and provide a recommendation to the Board regarding whether the solvent should be classified as a green solvent. If the Board determines the solvent should be classified as a green solvent it shall amend this rule to list the solvent as a green solvent. The classification shall become effective on the date the amended rule becomes effective.
- c) Prior to July 1, 2020 the following solvents were determined by the Council to be green solvents. These solvents shall remain classified as green solvents unless the Board changes their classification by an amendment to this rule:
- 1) Carbon Dioxide (CO₂);
 - 2) Propylene Glycol Ether DPnB; and
 - 3) Green Earth.

(Source: Former Section 1500.30 renumbered to Section 1501.200 - 220, 1500.55 (b) and (c) renumbered to 1501.230 (a) and (b) and amended at Ill. Reg. _____, effective _____.)

SUBPART C: REMEDIAL ACTION CLAIMS

Section 1501.300 General Remedial Action Claims Provisions

- a) The Fund provides reimbursement to eligible claimants for eligible costs of remedial action incurred in response to releases of drycleaning solvent at their drycleaning facilities.
- b) Eligible claimants must enroll in the Agency's Site Remediation Program and conduct remedial action under approval of the Agency in accordance with Title XVII of the EPA Act and regulations adopted thereunder
- c) *The owner or operator of an active drycleaning facility that has previously received or is currently receiving reimbursement for the costs of a remedial action shall maintain continuous financial assurance for environmental liability coverage in the amount of at least \$500,000 for that facility until January 1, 2030. Failure to comply with this requirement will result in the revocation of the drycleaning facility's existing license and in the inability of the drycleaning facility to obtain or renew a license. [415 ILCS 135/40(j)]*

Section 1501.310 Eligibility

- a) The following persons are eligible for reimbursement from the Fund for eligible remedial action costs:
 - 1) In the case of a facility that is an active drycleaning facility licensed at the time a remedial claim is submitted, the owner or operator of the drycleaning facility.
 - 2) In the case of a facility that is an inactive drycleaning facility at the time a remedial claim is submitted, an owner or operator of the inactive facility who was also the licensed owner or operator of the facility when it was an active drycleaning facility.
- b) A completed application for remedial action benefits must have been submitted to the Council on or before June 30, 2005.
- c) In addition to the requirements of subsections (a) and (b) of this Section, an eligible claimant requesting reimbursement of eligible costs from the Fund shall meet all of the following:
 - 1) *The release was discovered on or after July 1, 1997 and before July 1, 2006.*
 - 2) *The claimant demonstrates that the source of the release is from the claimant's drycleaning facility.*

- 3) *At the time the release was discovered by the claimant, the claimant and the drycleaning facility were in compliance with the Agency reporting and technical operating requirements.*
- 4) *The claimant reported the release in a timely manner in accordance with State law.*
- 5) *The drycleaning facility site is enrolled in the Site Remediation Program established under Title XVII of the Environmental Protection Act.*
- 6) *If the claimant is the owner or operator of an active drycleaning facility, the claimant must ensure the following:*
 - A) *All drycleaning solvent wastes generated at the drycleaning facility are managed in accordance with applicable State waste management laws and rules.*
 - B) *There is no discharge of wastewater from drycleaning machines, or of drycleaning solvent from drycleaning operations, to a sanitary sewer or septic tank or to the surface or in groundwater.*
 - C) *The drycleaning facility has a containment dike or other containment structure around each machine, item of equipment, drycleaning area, and portable waste container in which any drycleaning solvent is utilized, which is capable of containing leaks, spills, or releases of drycleaning solvent from that machine, item, area, or container. The containment dike or other containment structure shall be capable of at least the following:*
 - i) *containing a capacity of one hundred and ten percent (110%) of the drycleaning solvent in the largest tank or vessel within the machine;*
 - ii) *containing one hundred percent (100%) of the drycleaning solvent of each item of equipment or drycleaning area; and*
 - iii) *containing one hundred percent (100%) of the drycleaning solvent of the largest portable waste container or at least ten percent (10%) of the total volume of the portable waste containers stored within the containment dike or structure, whichever is greater.*
 - D) *Those portions of diked floor surfaces on which a drycleaning solvent may leak, spill, or otherwise be released are sealed or otherwise impervious.*

- E) *All drycleaning solvent is delivered to drycleaning facilities by means of closed, direct-coupled delivery systems.*
- 7) *An active drycleaning facility has maintained continuous financial [insurance] for environmental liability coverage in the amount of at least \$500,000 at least since the date of award of benefits from the Fund or July 1, 2000, whichever is earlier [415 ILCS 135/40].*
- A) *An uninsured drycleaning facility that filed an application for insurance with the Fund by January 1, 2004, obtained insurance through that application, and maintained that insurance coverage continuously shall be considered to have conformed with the requirements of this subsection (c)(7). To conform with this requirement the owner or operator must pay the equivalent of the total premiums due for the period beginning June 30, 2000 through the date of application plus a 20% penalty of the total premiums due for that period [415 ILCS 135/40].*
- B) *For purposes of remedial claim eligibility, an active drycleaning facility that obtains financial insurance for environmental liability coverage, provided by Fund insurance coverage, is considered to have maintained continuous financial insurance for environmental liability if the owner or operator maintained continuous insurance coverage throughout each program year, including payment of all insurance premiums within each calendar year of coverage. Continuous financial insurance shall be considered maintained for purposes of this subsection (7) even when a gap in insurance coverage occurs due to late renewal, so long as the insurance coverage is renewed within the coverage year within which the gap appears and all premiums due were paid during such coverage year.*

Section 1501.320 Deductible Requirements

The following deductibles shall apply before any reimbursement from the Fund for eligible costs relating to a release may be made:

- a) *Active Drycleaning Facility Deductible*
- 1) *If, by January 1, 2008, an eligible claimant submitting a claim for an active drycleaning facility completed site investigation and submitted to the Council a complete remedial action plan for the site, then the eligible claimant is responsible for the first \$5,000 of eligible investigation costs and for the first \$10,000 of eligible remedial action costs incurred in connection with the release from the drycleaning facility and is only eligible for reimbursement for costs that exceed those amounts, subject to any other limitations of the DERT Fund Act [415 ILCS 135/40(e)(1)].*

2) Any eligible claimant submitting any other claim for an active drycleaning facility is responsible for the first \$5,000 of eligible investigation costs and for the first \$15,000 of eligible remedial action costs incurred in connection with the release from the drycleaning facility, and is only eligible for reimbursement for costs that exceed those amounts, subject to any other limitations of the DERT Fund Act [415 ILCS 135/40(e)(1)].

b) Inactive Drycleaning Facility Deductible

1) If, by January 1, 2008, an eligible claimant submitting a claim for an inactive drycleaning facility completed site investigation and submitted to the Council a complete remedial action plan for the site, then the claimant is responsible for the first \$10,000 of eligible investigation costs and for the first \$10,000 of eligible remedial action costs incurred in connection with the release from that drycleaning facility, and is only eligible for reimbursement for costs that exceed those amounts, subject to any other limitations of the DERT Fund Act [415 ILCS 135/40(e)(2)].

2) Any eligible claimant submitting any other claim for an inactive drycleaning facility is responsible for the first \$15,000 of eligible investigation costs and for the first \$15,000 of eligible remedial action costs incurred in connection with the release from the drycleaning facility, and is only eligible for reimbursement for costs that exceed those amounts, subject to any other limitations of the DERT Fund Act [415 ILCS 135/40(e)(2)].

Section 1501.330 Reimbursement Limitations

- a) Reimbursement shall be limited to costs reviewed and approved within budgets submitted and approved in accordance with this Part.
- b) Reimbursement shall be paid only for releases discovered on or after July 1, 1997, and on or before June 30, 2006.
- c) Maximum Reimbursement Amounts
- 1) For each active drycleaning facility, subsequent to meeting the applicable deductible requirements of Section 1501.320, reimbursement shall not exceed three hundred thousand dollars (\$300,000) per drycleaner facility.
- 2) For each inactive drycleaning facility, subsequent to meeting the applicable deductible requirements of Section 1501.320, reimbursement shall not exceed fifty thousand dollars (\$50,000) per drycleaner facility.
- d) Reimbursement shall be paid based on the availability of funds in the Fund, and on claimant's compliance with the claim procedures in Section 1501.350, as

applicable. Reimbursement will not be paid in advance of remedial action work and Agency approval of such work.

- e) Reimbursement shall not be made for any remedial action costs that have not been approved in a budget by the Council or the Agency prior to the commencement of work.
- f) Unless an emergency exists, as defined in Section 1501.130, reimbursement is contingent upon the claimant following all applicable steps and claim procedures set forth in this Subpart, associated regulations within Title XVII of the EPA Act and regulations promulgated thereunder.
- g) Reimbursement shall not be provided for ineligible costs. Ineligible costs include, but are not limited to, the following:
 - 1) Preparation of claim submittals.
 - 2) Removal of soil that is not contaminated.
 - 3) Installation, removal, transport, storage or disposal of drycleaning systems.
 - 4) Cleaning, repairs, and maintenance of drycleaning systems.
 - 5) Markups on subcontractor costs.
 - 6) Legal fees.
 - 7) Third party claims other than remediation of soil or groundwater contamination.
 - 8) Deductibles applicable under Section 1501.320.
 - 9) Costs not approved by the Council or the Agency prior to the commencement of work.
- h) *If a claimant has pollution liability insurance coverage other than coverage provided by the insurance account under the DERT Fund Act and this Part, that coverage shall be primary. Reimbursement from the remedial account of the DERT Fund shall be limited to the deductible amounts under the primary coverage and the amount that exceeds the policy limits of the primary coverage, subject to the deductible amounts established under the DERT Fund Act and this Part. [415 ILCS 135/(f)(9)]*
- i) *Costs of corrective action or indemnification incurred by a claimant which have been paid to a claimant under a policy of insurance other than the insurance provided under Subpart D, another written agreement, or a court order are not*

eligible for reimbursement. A claimant who receives payment under such a policy, written agreement, or court order shall reimburse the State to the extent such payment covers costs for which payment was received from the Fund. Any moneys received by the State under this subsection shall be deposited into the Fund [415 ILCS 135/40].

Section 1501.340 Payment Prioritization

- a) The Agency shall prioritize approved claims for reimbursement from the Fund whenever it determines there are not sufficient funds to pay all approved reimbursement claims. In prioritizing approved claims for reimbursement, the Agency shall consider, at a minimum, the following:
- 1) the degree to which human health and the environment is impacted by the release;
 - 2) the reduction of risk to human health and environment derived from remedial action compared to the cost of the remedial action;
 - 3) the present and planned uses of the impacted property;
 - 4) whether the facility is currently licensed, insured, and all fees and premiums due under this Part have been paid; and
 - 5) whether the claimant failed to provide requested information or documentation after being notified under Section 1501. 340(b).
- b) If the Agency prioritizes approved claims for reimbursement under subsection (a) of this Section, the Agency shall post an approved reimbursement claims prioritization list on its website.

Section 1501.350 Claim Procedures

- a) All claims for reimbursement received by the Agency on or after the effective date of this Part must be reviewed in accordance with this Part. Claims received prior to the effective date of this Part shall be reviewed in accordance with the rules in effect at the time of claim submission. Except as provided in Section 77 of the DERT Fund Act, the Agency shall not review or modify a final determination made by the Council or the Council's contractor prior to July 1, 2020.
- b) Budgets
- 1) To obtain approval of reimbursable remedial action costs a claimant must submit a budget to the Agency for review and approval prior to the commencement of work. The Agency shall not accept a budget unless a

corresponding SRP plan has been submitted for such budget in accordance with and satisfying the requirements of 35 Ill. Adm. Code 740.

2) The budget must be submitted on forms and in a format prescribed by the Agency and must include, at a minimum, the following:

A) Identification of the claimant and the remediation site, including but not limited to, the following:

- i) The full legal name, address and telephone number of the claimant, and any contact person to whom inquiries and correspondence should be addressed;
- ii) The address, site name, tax parcel identification number(s), and Agency-issued site identification number for the remediation site and the date of acceptance of the site into the SRP; and
- iii) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the claimant.

B) Line item estimates of the eligible remedial action costs for which the claimant will seek reimbursement including, but not limited to, the following:

- i) Site investigation activities: drilling costs; physical soil analysis; monitoring well installation; soil and/or water disposal costs from drilling activities; and soil gas sampling.
- ii) Sampling and analysis activities: soil analysis costs; groundwater analysis costs; soil gas analysis costs; and groundwater purge water disposal costs.
- iii) Remedial activities: groundwater remediation costs; soil excavation and soil disposal costs; soil remediation costs; backfill costs; groundwater remediation costs; and installation of building control technologies.
- iv) SRP plan and report preparation costs.

3) The original budget and one copy, both in paper form, must be mailed to the address designated by the Agency on the forms.

4) If, following the approval of a budget, the corresponding SRP plan is amended or the budget needs to be amended, the claimant must submit an amended budget for review in accordance with this Part.

- 5) The Agency must review the budget in conjunction with the corresponding SRP plan to determine whether the estimated costs submitted are eligible remedial action costs and whether the costs estimated for the activities are reasonable.
- A) *To be eligible for eventual reimbursement from the Fund, costs must be within the range of usual and customary rates for similar or equivalent goods or services, incurred in performance of remediation work approved by the Agency, and necessary to respond to the release for which the claimant is seeking reimbursement from the Fund [415 ILCS 135/40].*
- B) The Agency's budget review must consist of a detailed review of the costs associated with each element necessary to accomplish the response to the identified release under the EPA Act and 35 Ill. Adm Code 740. Items to be reviewed must include, but are not limited to, costs associated with any materials, activities, or services that are included in the SRP plan. The claimant must demonstrate that all costs are within the range of usual and customary rates for similar or equivalent goods or services, incurred in performance of remediation work approved by the Agency, and necessary to respond to the release for which the claimant is seeking reimbursement from the Fund.
- 6) Upon completion of the review, the Agency must issue a letter to the claimant approving, disapproving, or modifying the remedial action costs submitted in the budget. The following procedures, at a minimum, apply regarding Agency determinations:
- A) The Agency's budget determination shall be provided in writing.
- B) The Agency may combine the notification of its budget determination with the notification of its final determination on the corresponding SRP plan.
- C) If costs in a budget are disapproved or approved with modification, the written notification of the Agency's budget determination shall contain the following:
- i) An explanation of the specific type of information or documentation, if any, that the Agency finds the claimant did not provide;
- ii) The reasons for the disapproval or modification; and

iii) Citations to statutory or regulatory provisions upon which the determination is based.

D) If the Agency disapproves an SRP plan or approves an SRP plan with conditions, in accordance with 35 Ill. Adm. Code 740, the Agency may return the corresponding budget to the claimant without review. If an amended SRP plan is submitted in response to the Agency's action, the claimant may submit an amended budget for review. A claimant may also submit an amended budget in response to the Agency's approval of an SRP plan with conditions.

E) The burden of proof is on the claimant in any review.

7) The Agency shall not reimburse a cost from the Fund unless the corresponding work has been approved in an SRP plan in accordance with 35 Ill. Adm. Code Part 740 and the cost has been approved in a budget in accordance with the requirements of this Part.

c) Reimbursement Requests

1) After completing the work approved in an SRP plan with a corresponding approved budget, a claimant may submit a reimbursement request to the Agency for such work.

2) The reimbursement request must be submitted on forms and in a format prescribed by the Agency and must include, at a minimum, the following information:

A) Identification of the claimant and the remediation site, including but not limited to:

i) The full legal name, address and telephone number of the claimant and any contact person to whom inquiries and correspondence should be addressed;

ii) The address, site name, tax parcel identification number(s), and Agency-issued site identification number for the remediation site and the date of acceptance of the site into the SRP; and

iii) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the claimant.

B) Line item costs that the claimant incurred for the development and implementation of the SRP plan, including but not limited to:

- i) Site investigation activities: drilling costs; physical soil analysis; monitoring well installation; soil and/or water disposal costs from drilling activities; and soil gas sampling.
 - ii) Sampling and analysis activities: soil analysis costs; groundwater analysis costs; soil gas analysis costs; and groundwater purge water disposal costs.
 - iii) Remedial activities: groundwater remediation costs; soil excavation and soil disposal costs; soil remediation costs; backfill costs; groundwater remediation costs; and installation of building control technologies.
 - iv) SRP plan and report preparation costs.
 - C) All invoices, bills, and payment documentation related to the incurred line item costs, above.
 - D) An IRS Form W-9 completed by the claimant.
 - E) A designation of the claimant's address to which payment, if approved, and notice of final action on the request are to be sent.
- 3) The Agency must review the reimbursement request to determine whether the submitted actual costs fall within the previously approved budget, and otherwise comply with this Part, 35 Ill. Adm. Code 740, the EPA Act, and the DERT Fund Act.
- A) *To be eligible for reimbursement from the Fund, costs must be within the range of usual and customary rates for similar or equivalent goods or services, incurred in performance of remediation work approved by the Agency, and necessary to respond to the release for which the claimant is seeking reimbursement from the Fund [415 ILCS 135/40].*
 - B) The Agency's review may include a review of any or all elements and supporting documentation relied upon by the claimant in developing the reimbursement request, including but not limited to a review of invoices or receipts supporting all claims. The review also may include the review of any plans, budgets, or reports previously submitted for the site to ensure that the request is consistent with work proposed and actually performed in conjunction with the site.

- C) Costs must be less than or equal to the costs approved in the corresponding budget. The Agency shall not reimburse for costs in excess of approved eligible costs.
 - D) Work crossing multiple line items, as well as transferring funds between line items, is prohibited.
- 4) Upon completion of the review, the Agency must issue a letter to the claimant approving, denying, or modifying the remedial action costs submitted in the reimbursement request. The following considerations apply regarding Agency determinations:
- A) The Agency's reimbursement request determination shall be provided in writing. The Agency's determination shall be deemed to have been made on the postmarked date that the written determination is mailed.
 - B) If a reimbursement request is denied or approved with modification, the written notification shall contain the following:
 - i) An explanation of the specific type of information or documentation, if any, that the Agency finds the claimant did not provide;
 - ii) The reasons for the disapproval or modification of the remedial action costs requested; and
 - iii) Citations to statutory or regulatory provisions upon which the determination is based.
 - C) The burden of proof is on the claimant in any review.
- 5) All reimbursement requests must be submitted to the Agency within one (1) calendar year following the date the Agency issues a No Further Remediation Letter for the release. In no case shall the Agency pay reimbursement requests submitted more than one (1) calendar year after the date the Agency issues a No Further Remediation Letter under Subpart F of 35 Ill. Adm. Code 740.
- d) Payment
- 1) After issuing a letter approving or approving with conditions a reimbursement request the Agency shall forward a voucher to the Illinois Office of the Comptroller for payment.

- 2) The Agency must not forward a voucher to the Illinois Office of the Comptroller unless sufficient funds are available to issue reimbursement in the full amount of the voucher.
- 3) If the Agency determines that insufficient funds remain to issue full reimbursement, the Agency will prioritize the approved reimbursement according to Section 1501.340 and notify affected claimants in writing.
- 4) When the Agency determines that full funds are available for reimbursement, the Agency will prepare vouchers for payment as follows:
 - A) Any deductible, under Section 1501.320, must be subtracted from any amount approved for payment by the Agency.
 - B) The Agency will request that the Illinois Office of the Comptroller issue payment to the claimant at the address designated in accordance with Section 1501.350(c)(2)(E). In no case must the Agency authorize the Illinois Office of the Comptroller to issue payment to an agent, designee, or entity that has conducted remedial action activities for the claimant.

Section 1501.360 Administrative Assessments for Eligible Inactive Drycleaning Facilities

Owners and operators of inactive drycleaning facilities that are eligible for reimbursement from the Fund shall, through calendar year 2029, pay an annual \$3,000 administrative assessment each calendar year to the Agency for the facility. The annual assessment is due on or before February 1 of the applicable calendar year. Administrative assessments collected by the Agency under this Section shall be deposited into the Fund [415 ILCS 135/40].

SUBPART D: INSURANCE CLAIMS

Section 1501.400 General Insurance Provisions

- a) An owner or operator may purchase environmental liability coverage under the Fund of up to five hundred thousand dollars (\$500,000) per drycleaning facility, subject to the terms and conditions of the DERT Fund Act and this Part. Coverage shall be limited to approved remedial action costs associated with soil and groundwater contamination resulting from a release of drycleaning solvent at a covered drycleaning facility, including third-party liability for soil and groundwater contamination. Coverage is not provided for a release that occurred before the date of coverage [415 ILCS 135/45].
- b) Coverage may be provided to either the owner or the operator of a drycleaning facility. However, total coverage for an individual facility is limited to five hundred thousand dollars (\$500,000). The Agency is not required to resolve whether the owner or operator, or both, are responsible for a release under the terms of an agreement between the owner and operator.

- c) Covered claimants must enroll in the Agency's Site Remediation Program and conduct remedial action under approval of the Agency in accordance with Title XVII of the EPA Act and regulations adopted thereunder.
- d) The owner or operator of an active drycleaning facility that has previously received or is currently receiving reimbursement for the costs of a remedial action, shall maintain continuous financial insurance for environmental liability coverage in the amount of at least \$500,000 for that facility until January 1, 2030. Failure to comply with this requirement will result in the revocation of the drycleaning facility's existing license, potential civil penalties, and in the inability of the drycleaning facility to obtain or renew a license [415 ILCS 135/40]. Failure to maintain insurance will also result in ineligibility for reimbursement from the Fund for remedial action claims.
- e) The owner or operator of a drycleaning facility that has a release must provide notice of any release within twenty-four (24) hours after the release. A notice of claim must be submitted in writing to the Agency as soon as is reasonably possible after a notice of a release.

Section 1501.410 Eligibility

- a) An owner or operator, subject to the terms and conditions of DERT Fund Act and this Part, may purchase environmental liability coverage under the Fund provided that:
 - 1) a site investigation designed to identify soil or groundwater contamination resulting from the release of a drycleaning solvent has been completed for the drycleaning facility to be insured and the site investigation has been found adequate by the Council before July 1, 2020 or by the Agency on or after that date;
 - 2) the drycleaning facility is participating in and meet all drycleaning compliance program requirements adopted by the Board pursuant to Section 12 of [the DERT Fund Act];
 - 3) the drycleaning facility to be insured is licensed under Subpart B and all fees due under that Subpart have been paid;
 - 4) the owner or operator of the drycleaning facility to be insured provides proof to the Agency that:
 - A) All drycleaning solvent wastes generated at the drycleaning facility are managed in accordance with applicable State waste management laws and rule;

- B) *There is no discharge of wastewater from drycleaning machines, or of drycleaning solvent from drycleaning operations, to a sanitary sewer or septic tank, to the surface, or in groundwater;*
- C) *The facility has a containment dike or other containment structure around each machine, item of equipment, drycleaning area, and portable waste container in which any drycleaning solvent is utilized, that is capable of containing leaks, spills, or releases of drycleaning solvent from that machine, item, area, or container, including:*

 - i) *One hundred and ten percent (110%) of the drycleaning solvent in the largest tank or vessel;*
 - ii) *One hundred percent (100%) of the drycleaning solvent of each item of equipment; and*
 - iii) *One hundred percent (100%) of the drycleaning solvent of the largest portable waste container or at least ten percent (10%) of the total volume of the portable waste containers stored within the containment dike or structure, whichever is greater;*
- D) *Those portions of diked floor surfaces on which a drycleaning solvent may leak, spill, or otherwise be released are sealed or otherwise impervious;*
- E) *All drycleaning solvent is delivered to the facility by means of closed, direct-coupled delivery systems; and*
- 5) *The owner or operator of the drycleaning facility to be insured has paid all insurance premiums for insurance covered provided under the Fund. [415 ILCS 135/45(d)]*

[Board Note: As of the enactment of Section 1501.410(a)(2) above, the Board has not adopted drycleaning compliance program requirements under Section 12 of the DERT Fund Act.]

- b) *Application for Environmental Liability Coverage*

 - 1) *All eligible owners or operators seeking or renewing insurance coverage from the Fund must apply for annual insurance coverage on forms and in a format prescribed by the Agency.*
 - 2) *Annual insurance coverage applications and premium payments should be submitted to the Agency at least ninety (90) calendar days prior to the expiration of the current coverage to allow sufficient time for Agency review and processing.*

- 3) The Agency will process an annual insurance coverage application upon receipt of:
 - A) a properly completed insurance coverage application form, including any required attachments or certification(s); and
 - B) payment of the annual premium or the first semi-annual premium under Section 1501.420.
- 4) The Agency shall not process an annual insurance coverage application unless payment of the annual premium or the first semi-annual premium has been received.
- 5) A grace period of sixty (60) calendar days shall be allowed for payment of the annual premium or the first semi-annual premium. The grace period shall begin on the due date for the annual premium or the first semi-annual premium as set forth in Section 1501.420(a)(3). Full payment of the annual premium or the first semi-annual premium due is required regardless of the date the premium is paid.
 - A) If the annual premium or the first semi-annual premium is paid within the grace period above, insurance coverage shall be issued retroactive to the due date for the annual premium or the first semi-annual premium set forth in 1501.420(a)(3).
 - B) If the annual premium or the first semi-annual premium is not paid within the grace period above, insurance coverage shall not begin until the date the annual premium or the first semi-annual premium payment is received by the Agency.
- 6) A grace period of sixty (60) calendar days shall be allowed for payment of second semi-annual premiums. The grace period shall begin on the due date for the second semi-annual premium as set forth in Section 1501.420(a)(3). Full payment of the second semi-annual premium due is required regardless of the date the premium is paid.
 - A) If the second semi-annual premium is paid within the grace period above, insurance coverage for the second six (6) calendar months of coverage shall continue retroactive to the due date for the second semi-annual premium set forth in 1501.420(a)(3).
 - B) If the second semi-annual premium is not paid within the grace period above, insurance coverage during the second six (6) calendar months of coverage shall not begin until the date the second semi-annual premium payment is received by the Agency.

- 7) After processing the insurance coverage application, the Agency will send a letter to the owner or operator acknowledging coverage and providing the dates of coverage.
- 8) The Agency shall not authorize payments for costs relating to any release that occurs outside the dates of coverage.

Section 1501.420 Premium and Deductible Requirements

a) Premiums

- 1) The annual premium for insurance coverage shall be:
 - A) For the year July 1, 2020 through June 30, 2021, and for subsequent years through June 30, 2029, one thousand five hundred dollars (\$1,500) per drycleaning facility per coverage year.
 - B) For July 1, 2029 through January 1, 2030, seven hundred fifty dollars (\$750) per drycleaning facility per coverage year.
 - 2) Premiums shall not be prorated. If coverage is purchased for any part of a coverage year, the purchaser shall pay the full annual premium.
 - 3) Premiums may be paid annually or semi-annually. Payment of premiums on an annual basis are due on the first day of the first month of coverage. For premiums paid semiannually, payment of the first semi-annual premium is due on the first day of the first six (6) calendar months of coverage and payment of the second semi-annual premium is due on the first day of the second six (6) calendar months of coverage.
- b) Any insurance coverage provided under this Section shall be subject to a ten thousand-dollar (\$10,000) deductible on eligible costs.

Section 1501.430 Coverage Limitations

- a) Coverage shall be limited to approved remedial action costs associated with soil or groundwater contamination resulting from a release of drycleaning solvent at an insured drycleaning facility, including owner or operator liability to third parties for soil or groundwater contamination.
- b) Coverage shall not be provided for a release that occurred outside the dates of coverage.
- c) Insurance purchased by an eligible owner or operator and issued by the Agency shall provide coverage up to five hundred thousand dollars (\$500,000) per insured

drycleaning facility subject to the limitations, conditions, and procedures of the DERT Fund Act and this Part.

- d) Coverage provides reimbursement of eligible costs to claimants following the claim procedures as specified in Section 1501.450.
- e) Reimbursement shall not be made for any remedial action costs that have not been approved by the Agency in a SRP plan and a budget prior to the commencement of work.
- f) Unless an emergency exists, as defined in Section 1501.130, reimbursement is contingent upon the claimant following all steps and claim procedures set forth in this Subpart.
- g) Coverage and reimbursement shall be provided only for eligible costs. Ineligible costs include, but are not limited to:
 - 1) Preparation of claim submittals.
 - 2) Removal of soil that is not contaminated as within in approved plan.
 - 3) Installation, removal, transport, storage or disposal of drycleaning systems.
 - 4) Cleaning, repairs, and maintenance of drycleaning systems.
 - 5) Markup on subcontractor costs.
 - 6) Legal fees.
 - 7) Third party claims other than remediation of soil or groundwater contamination.
 - 8) Any deductibles applicable under Section 1501.420.
 - 9) Costs not approved by the Council or the Agency prior to the commencement of work.
- h) If a claimant has pollution liability insurance coverage other than insurance coverage provided by the Fund, that other coverage shall be primary. In such instances, insurance coverage from the Fund shall be limited to the deductible amounts under the primary coverage and the amount that exceeds the policy limits of the primary coverage, subject to the deductible amounts established under this Subpart.

Section 1501.440 Claim Prioritization

- a) The Agency shall prioritize insurance coverage payments from the Fund whenever the Agency, in its sole discretion, determines that there are not sufficient funds to pay all vouchers to be forwarded to the Comptroller under Sections 1501.350(d) and 1501.450(d).
- b) If the Agency prioritizes insurance coverage payments under subsection (a) of this Section, the Agency shall assign priority for payment based on the date order the payments are approved under Section 1501.450(d). Insurance coverage payments prioritized under this Section shall take precedence over approved payments prioritized under Section 1501.340.

Section 1501.450 Claim Procedures

- a) General
 - 1) Claimants seeking reimbursement under insurance coverage must follow all applicable claim procedures set forth in this Section. Except as provided in Section 77 of the DERT Fund Act, the Agency cannot review or modify final decisions made by the Council or its contractors.
 - 2) New Claims
 - A) On and after the effective date of this Part, an owner or operator of an insured drycleaning facility, under Section 1501.410, may submit an insurance coverage claim to the Agency.
 - B) The insurance coverage claim must be set forth on forms prescribed and provided by the Agency and must include, at a minimum, the following:
 - i) Identification of the claimant, including each person's full legal name, address, and telephone number; and the affected drycleaning facility and other site, if any, including the address and tax parcel identification number(s); and
 - ii) A written summary of the basis of the claim, including a description of the release of drycleaning solvent and any investigation into soil or groundwater contamination possibly resulting from the release.
 - C) The insurance coverage claim in paper form, one original and one copy, must be mailed to the address designated by the Agency on the forms.

- D) The Agency will review the insurance coverage claim to determine whether it is complete, in compliance with the limitations, conditions, and procedures of this Subpart, and eligible for further claim processing under this Section.
- E) Upon completion of the review, the Agency will issue a determination of eligibility, or ineligibility, for further claim processing under this Section. The following rules apply regarding an Agency determination of ineligibility:
 - i) The Agency's determination of ineligibility shall be provided in writing.
 - ii) The written notification shall contain, as applicable: an explanation of the specific type of information or documentation, if any, that the Agency finds the claimant did not provide; the reasons for the determination of ineligibility; and citations to statutory or regulatory provisions upon which the determination is based.
 - iii) The burden of proof is on the claimant in such proceeding.
- F) If the Agency's determination of ineligibility is based on the incompleteness of the insurance coverage claim, the claimant may correct any deficiencies and resubmit the claim to the Agency.

b) Budgets

- 1) After receiving a determination of eligibility from the Agency under Section 1501.450(a)(2)(E), a claimant may submit a budget along with its corresponding SRP plan (see: 35 Ill. Adm. Code 740, Subparts D & E). The Agency shall not accept a budget unless a corresponding SRP plan, satisfying the requirements of 35 Ill. Adm. Code 740, has also been submitted.
- 2) The budget must be set forth on forms prescribed and provided by the Agency and must include, but is not limited to, the following information:
 - A) Identification of the claimant, the remediation site, including:
 - i) The full legal name, address and telephone number of the claimant, and any contact persons to whom inquiries and correspondence must be addressed;
 - ii) The address, site name, tax parcel identification number(s), and Agency-issued identification number for the

remediation site and the date of acceptance of the site into the Site Remediation Program; and

iii) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the claimant.

B) Line item estimates of the costs that the claimant anticipates and for which the claimant will seek insurance coverage, including but not limited to, the following:

i) Site investigation activities: drilling costs; physical soil analysis; monitoring well installation; soil and/or water disposal costs from drilling activities; and soil gas sampling.

ii) Sampling and analysis activities: soil analysis costs; groundwater analysis costs; soil gas analysis costs; and groundwater purge water disposal costs.

iii) Remedial activities: groundwater remediation costs; soil excavation and soil disposal costs; soil remediation costs; backfill costs; groundwater remediation costs; and installation of building control technologies.

iv) Report preparation costs.

3) The budget in written form, one original and one copy, must be mailed to the address designated by the Agency on the forms.

4) If the SRP plan is amended by the claimant, or as a result of Agency action, the corresponding budget may be revised accordingly and resubmitted if the claimant wishes for any additional costs, resulting from the amendment, to be eligible for insurance coverage.

5) The Agency must review the budget in conjunction with the SRP plan to determine whether the estimated costs submitted are eligible remedial action costs and whether the costs estimated for the activities are reasonable.

A) *To be eligible for eventual reimbursement from the Fund, costs must be within the range of usual and customary rates for similar or equivalent goods or services, incurred in performance of remediation work approved by the Agency, and necessary to respond to the release for which the claimant is seeking reimbursement from the Fund [415 ILCS 135/45].*

B) The Agency's budget review must consist of a detailed review of the costs associated with each element necessary to accomplish the goals of the SRP plan as required under the EPA Act and 35 Ill. Adm. Code 740. Items to be reviewed must include, but are not limited to, costs associated with any materials, activities, or services that are included in the budget. The overall goal of the review must be to assure that costs associated with materials, activities, and services must be reasonable, must be consistent with the associated SRP plan, must be incurred in the performance of remedial action activities, must not be used for remedial action activities in excess of those necessary to meet the associated SRP plan.

6) Upon completion of the review, the Agency must issue a letter to the claimant approving, denying, or approving with modification the estimated remedial action costs submitted in the budget. Agency determinations will apply the following:

A) The Agency's budget determination shall be provided in writing.

B) The Agency may combine the notification of its budget determination with the notification of its final determination on the corresponding SRP plan.

C) If a budget is denied or approved with modification of estimated remedial action costs, the written notification shall contain, at a minimum, the following information as applicable:

i) An explanation of the specific type of information or documentation, if any, that the Agency finds the claimant did not provide;

ii) The reasons for the disapproval or modification of estimated remedial action costs; and

iii) Citations to statutory or regulatory provisions upon which the determination is based.

D) If the Agency denies an SRP plan or approves an SRP plan with conditions, in accordance with Part 740, the Agency may return the corresponding budget to the claimant without review. If the SRP plan is amended in response to Agency action, the claimant may submit a revised budget for review.

E) The burden of proof is on the claimant in any review.

- 7) The Agency-approved budget should form the basis of a claimant's subsequent remedial action, as the Agency will not reimburse remedial action costs above or beyond the approved budget.
- c) Coverage for Insurance Coverage claims for reimbursement.
- 1) After completing a phase of remedial action under an approved SRP plan and its corresponding approved budget, a claimant may submit a reimbursement claim for insurance coverage to the Agency. The Agency shall not accept a reimbursement claim for insurance coverage request unless it is accompanied by an SRP determination that the applicable phase of remedial action was completed under 35 Ill Adm. Code 740.
 - 2) The reimbursement claim for insurance coverage must be set forth on forms prescribed and provided by the Agency and must include, but is not limited to, the following:
 - A) The Agency-approved budget.
 - B) The SRP determination that an applicable phase of remedial action was completed under 35 Ill. Adm. Code 740.
 - C) Line item costs that the claimant incurred for the development and implementation of the SRP plan, including but not limited to:
 - i) Site investigation activities: drilling costs; physical soil analysis; monitoring well installation; soil and/or water disposal costs from drilling activities; and soil gas sampling.
 - ii) Sampling and analysis activities: soil analysis costs; groundwater analysis costs; soil gas analysis costs; and groundwater purge water disposal costs.
 - iii) Remedial activities: groundwater remediation costs; soil excavation and soil disposal costs; soil remediation costs; backfill costs; groundwater remediation costs; and installation of building control technologies.
 - iv) Report preparation costs.
 - D) All invoices, bills, and payment documentation related to the incurred line item costs, above.
 - E) An IRS Form W-9 completed by the claimant.

- F) A designation of the claimant's address to which payment, if approved, and notice of final action on the request are to be sent.
- 3) The reimbursement request in written form, one original and one copy, must be mailed to the address designated by the Agency on the forms.
- 4) The Agency must review the reimbursement request to determine whether the submitted actual costs fall within the previously approved budget, and are otherwise consistent with this Part, 35 Ill. Adm. Code 740, the EPA Act, and the DERT Fund Act.
 - A) *To be eligible for reimbursement from the Fund, costs must be within the range of usual and customary rates for similar or equivalent goods or services, incurred in performance of remediation work approved by the Agency, and necessary to respond to the release for which the claimant is seeking reimbursement from the Fund [415 ILCS 135/45].*
 - B) The Agency's review may include a review of any or all elements and supporting documentation relied upon by the claimant in developing the reimbursement request, including but not limited to a review of invoices or receipts supporting all claims. The review also may include the review of any plans, budgets, or reports previously submitted for the site to ensure that the request is consistent with work proposed and performed in conjunction with the site.
 - C) Line item costs must be less than or equal to their corresponding estimates in the Agency-approved budget. If an actual cost exceeds the amount approved in the budget, the claimant will not be reimbursed for the difference.
 - D) Work crossing multiple line items, as well as transferring funds between line items, is prohibited.
- 5) Upon completion of the review, the Agency must issue a letter to the claimant approving, denying, or modifying the remedial action costs submitted in the reimbursement request. The following criteria apply regarding Agency determinations:
 - A) The Agency's reimbursement request determination shall be provided in writing.
 - B) If a reimbursement request is denied or approved with modification of remedial action costs, the written notification shall contain the following information:

- i) An explanation of the specific type of information or documentation, if any, that the Agency finds the claimant did not provide;
 - ii) The reasons for the disapproval or modification of remedial action costs; and
 - iii) Citations to statutory or regulatory provisions upon which the determination is based.
 - C) The burden of proof is on the claimant in such proceeding.
- 6) All reimbursement requests must be submitted no later than one (1) calendar year after the date the Agency issues a No Further Remediation Letter under Subpart F of 35 Ill. Adm. Code 740.
- d) Payment
 - 1) After issuing a letter approving payment the Agency shall forward a voucher to the Illinois Office of the Comptroller for payment.
 - 2) The Agency must not forward vouchers to the Illinois Office of the Comptroller until full funds are available to issue reimbursement.
 - 3) If the Agency determines that insufficient funds remain to issue full reimbursement, the Agency will prioritize the reimbursement claim for insurance coverage claim according to Section 1501.440 and notify the affected claimants in writing
 - 4) When the Agency determines that funds are available to issue full reimbursement of an insurance coverage claim, the Agency will prepare vouchers for payment as follows:
 - A) Any deductible, under Section 1501.420, must be subtracted from any amount approved for payment by the Agency.
 - B) The Agency must instruct the Illinois Office of the Comptroller to issue payment to the claimant at the address designated in accordance with Section 1501.450(c)(2)(G). In no case must the Agency authorize the Illinois Office of the State Comptroller to issue payment to an agent, designee, or entity that has conducted remedial action activities for the claimant.

(Source: Former Section 1500.50 renumbered to Section 1501.400 - .450, and amended at Ill. Reg. _____, effective _____.)

Technical Support Document for:

35 Ill. Adm. Code 1501: Drycleaner Environmental
Response Trust Fund Program

January 2021

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

List of Acronyms and Abbreviations used within:

Act	Illinois Environmental Protection Act (415 ILCS 5/1 et seq.)
Board	Illinois Pollution Control Board
Council	Drycleaner Environmental Response Trust Fund Council
Council Rules	Title 35 Ill. Adm. Code Part 1500
DERT Fund	Drycleaner Environmental Response Trust Fund (415 ILCS 135/10)
DERT Fund Act	Drycleaner Environmental Response Trust Fund Act (415 ILCS 135/1 et seq.)
Illinois EPA	Illinois Environmental Protection Agency
SRP	Site Remediation Program
SRP Rules	Title 35 Ill. Adm. Code Part 740

I. Executive Summary

On August 16, 2019, the Governor signed P.A. 101-400 into law, which amended the DERT Fund Act. The primary effect of the public act was to transition administration of the DERT Fund and compliance with the DERT Fund Act from the Council to the Illinois EPA. This transition will involve, among other things, the Illinois EPA overseeing drycleaning facility licensing and the review and payment of cost claims under the DERT Fund Act. The public act also authorized the Board to adopt rules governing the administration of the authorities shifted to the Illinois EPA.

The purpose of this Technical Support Document is to inform the Board and the public of the Illinois EPA's proposed rules and will include a discussion of the technical feasibility and economic reasonableness of the proposed rules.

The proposed rules for 35 Ill. Adm. Code Part 1501 address implementation of the DERT Fund Act in relation to drycleaner licensing, insurance provided under the DERT Fund, and the review and approval of drycleaners' remedial action claims and insurance claims by the Illinois EPA. The proposed rules are similar in nature and impact to the Council's rules that have been in effect for over two decades and which on July 1, 2020, became Board rules.

II. Introduction

On August 19, 1997, P.A. 90-502 was signed into law creating the DERT Fund and establishing the Council. The Council was comprised of seven individuals involved in the drycleaning industry in various capacities that were appointed by the Governor for three-year terms. The Council was responsible for administering the DERT Fund, which included reviewing and authorizing reimbursement to claimants for eligible expenses related to remedial activities undertaken at current and former drycleaning sites. The Council was also responsible for licensing drycleaning facilities and overseeing environmental insurance coverage and reimbursement from the DERT Fund.

The DERT Fund Act authorized the Council to adopt rules governing its programmatic processes. In 1999, the Council proposed such rules, which were adopted at 35 Ill. Adm. Code Part 1500, and became effective on January 1, 2000. The Council was not subject to Illinois EPA oversight and was not otherwise subject to Illinois EPA or Board regulation.

The Council was statutorily abolished, effective June 30, 2020. (See: 415 ILCS 135/12(b)). In the months preceding the Council's abolition, the Illinois EPA engaged the Council in an active dialogue to ease transition of the DERT Fund's administration to the Illinois EPA. This discourse included a thorough evaluation of the Council's rules and the most appropriate means to transition the programmatic functions. Effective July 1, 2020, administration of the DERT Fund resides with the authority granted by statute to the Illinois EPA. (See: 415 ILCS 135/12(a)). The technical elements of the new proposed rules are discussed in more detail below. (See: 415 ILCS 135/25).

With the abolishment of the Council on June 30, 2020, on July 1, 2020, the former Council's rules became, by statute, Board rules. (See: 415 ILCS 135/12(g)). The proposed Part 1501 rules were drafted to be similar to the existing rules and also reflect the current administration of the Fund by the Illinois EPA. Due to the changes being made to the existing rules, the Illinois EPA believes it

is easier to repeal the existing former Council rules in their entirety and submit the proposed changes as an entire new Part specific to the Illinois EPA's implementing the statutory mandates upon it. Therefore, this rulemaking includes the repeal of Title 35 Ill. Adm. Code Part 1500 and the adoption of an entire new Part, Title 35 Ill. Adm. Code Part 1501. The Illinois EPA also proposes to repeal Title 35 Ill. Adm. Code Part 1300, which are regulations applicable to the former Council relating to Freedom of Information Act requests, since the Illinois EPA and Board already have such provisions applicable to them.

III. Proposed New Rules, Title 35 Ill. Adm. Code Part 1501

A. Registration and Licensing

Illinois law prohibits a drycleaning facility in the State from operating without a license. (See: 415 ILCS 135/60(a)). Now, such licensing will be conducted by the Illinois EPA. Subpart B of the rulemaking proposal addresses the requirements for obtaining a license. (See: 415 ILCS 135/60(h)). As proposed, these procedures are consistent with the Council's, now Board's, rules.

As in previous years, drycleaner licenses will be issued for the calendar year and will expire at the end of the calendar year in which the license was issued. (See: 415 ILCS 135/60(b)). Each year, licensed drycleaning facilities must submit an application for license renewal prior to that license expiration. And, as before, a new drycleaning facility or a new applicant must apply for and obtain a license prior to initiating operations.

To obtain a license, applicants will be required to submit to the Illinois EPA a completed application on forms prescribed by the Illinois EPA. These applications will include much of the information historically mandated by the Council's license application process, such as:

- relevant site address and contact information;
- proof of payment of the appropriate annual license fee to the Illinois Department of Revenue;¹
- a certification that hazardous waste stored at the drycleaning facility complies with applicable state and federal laws and regulations;
- a certification that hazardous waste transported from the facility is transported in accordance with applicable federal and state laws and regulations; and
- a certification that the applicant has successfully completed all required continuing education.

The Illinois EPA may revoke a drycleaner's license under certain circumstances, including the drycleaner's failure to maintain adequate environmental liability coverage as required. (See: 415 ILCS 135/40(j)).

¹ License fees and the methodology for calculating annual fees are established by the DERT Fund Act. (See: 415 ILCS 135/60(c)).

B. DERT Fund Claims seeking reimbursement

The Illinois EPA is responsible for reviewing and authorizing reimbursement of costs associated with two types of claims for payment from the DERT Fund.

1) Historic claims seeking reimbursement

The first of these claims are remedial action claims, which are claims for reimbursement of eligible remediation costs incurred in response to a historic release of drycleaning solvents from a drycleaning facility. (See: 415 ILCS 135/40(a)).

Reimbursement for eligible remedial action at a drycleaning facility that is “active” at the time a claim is submitted may not exceed \$300,000 per facility; reimbursement for remedial action at a drycleaning facility that is “inactive” at the time a claim is submitted may not exceed \$50,000 per facility. (See: 415 ILCS 135/40(f)(1)). The proposed rules spell out many of the same limitations included in the current rules and statute, including requirements that:

- The release was discovered on or after July 1, 1997 and before July 1, 2006;
- The claimant demonstrates the source of the release is the drycleaning facility;
- The claimant was in compliance with applicable Illinois EPA reporting and technical requirements at the time of the release;
- The Claimant reported the release in a timely manner in accordance with Illinois law; and
- The drycleaning facility is enrolled in the Illinois EPA’s Site Remediation Program.

An active drycleaning facility applicant seeking reimbursement for costs must also demonstrate:

- Compliance with relevant waste management and facility standards; and
- That the drycleaning facility has maintained at least \$500,000 of environmental liability coverage at least since the earlier of (i) the date it first received remedial action benefits or (ii) July 1, 2000.

Prior to receiving reimbursement for any historic release remedial action cost, a claimant must satisfy the applicable deductible set forth in the DERT Fund Act and proposed rules. The chart below reflects the relevant deductible amounts for this subset of releases. (See: 415 ILCS 135/40(e)).

	Investigation Completed and Submitted by January 1, 2008		All Other Sites	
	Investigation Deductible	Remediation Deductible	Investigation Deductible	Remediation Deductible
Active Drycleaners	\$5,000	\$1,000	\$5,000	\$1,000
Inactive Drycleaners	\$10,000	\$10,000	\$15,000	\$15,000

Reimbursement is limited to actual eligible costs that are included in an Illinois EPA approved workplan submitted in accordance with Title XVII of the Environmental Protection Act and the SRP rules. (See: 415 ILCS 135/40(c)(4)). Only costs included in an Illinois EPA or Council approved budget prior to those costs being incurred are eligible for reimbursement.

Proposed Part 1501 identifies a non-exhaustive list of both eligible and ineligible costs for reimbursement. (See: 415 ILCS 135/40(f)). Eligible costs will generally include approved site investigation activities; soil, groundwater, and soil gas analysis; remediation costs; and SRP plan and report preparation costs. Eligible costs must, however, be within the range of usual and customary rates for similar or equivalent goods or services incurred in performance of Illinois EPA or Council approved remediation work. Ineligible costs will generally include those costs associated with preparing claim submittals, soil removal, drycleaning system installation, and legal fees.

The proposed Part 1501 rules will, for the most part, mirror historic Council practice and the claims payment procedures in the current rules. Remedial action reimbursement budgets and claims must be submitted on forms prescribed by the Illinois EPA. An applicant may not submit a reimbursement request until after submitting an SRP completion report reflecting that the work for which reimbursement is being requested has been performed and was indeed approved by the Illinois EPA. Upon application, the Illinois EPA will review submitted invoices to determine whether the submitted actual costs are eligible, within the approved budget and comply with the SRP rules. Costs that meet prerequisites will be approved; those that do not will be reduced to include only approvable costs. Upon the completion of its review, the Illinois EPA will issue a letter to the claimant approving, denying or modifying the requested reimbursement.

2) Insurance claims seeking reimbursement

The second type of the claims that may be paid for from the DERT Fund are insurance claims.

The coverage provided by the DERT Fund and proposed rules can be used to reimburse costs expended to address releases that occur during a coverage period. (See: 415 ILCS 135/45(a)). Drycleaning facilities may purchase insurance coverage from the DERT Fund for \$1,500 per year. (See: 415 ILCS 135/45(e)(6)). Premiums may be paid annually or semiannually. Annual premiums are due on the first day of the first month of coverage. Semiannual premiums are paid in two equal payments; the first due on the first day of the first month of coverage and the second due on the first day of the sixth month of coverage. A failure to timely remit insurance premiums results in a lapse in coverage and could prevent recovery of eligible costs related to a release that occurs during a lapse period.

3) Claim prioritization

Based on the availability of funds within the DERT Fund, the Illinois EPA may need to prioritize claims. (See: 415 ILCS 135/25(c)). In such cases, the proposed Part 1501 rules allow the Illinois EPA to consider a list of factors when prioritizing claims. Those criteria include, but are not limited to:

- the degree to which human health and the environment is impacted by the release;

- the reduction of risk to human health and the environment derived from remedial action;
- the present and planned uses of the property;
- whether the facility is currently licensed, insured, and current on fees; and
- whether the claimant failed to provide requested information or documentation.

If the Illinois EPA prioritizes claims for reimbursement, a prioritization list of pending claims will be posted on the program's website.

Regarding insurance claims, the criteria for prioritizing pending insurance claims is based upon the date the Illinois EPA finalizes its review of the reimbursement request, with the first claims finalized being the first claims paid.

4) Similarities in the regulations between claims

In most respects, the administration of a insurance claims will be similar to the administration of historical release remedial action claims outlined above, and is directly in line with the current rules, the Council's historic administration of insurance coverage, and most importantly the DERT Fund Act. For both insurance claims and historic release remedial claims:

- the drycleaning facility must enroll in the Site Remediation Program to receive reimbursement for approvable costs related to a release;
- reimbursed costs are limited to actual approved costs to address soil or groundwater contamination;
- a comparable roster of ineligible costs is enumerated in the proposed rules; and
- budgets and requests for reimbursement will be submitted on forms prescribed by the Illinois EPA.

In addition, the Illinois EPA's procedures for reviewing claims, notifying the claimant of a decision, and remitting payment parallel the processes for a historic release remedial action claim.

5) Differences in the regulations between claims

There are several notable differences between the Part 1501 rules' treatment of historic release remedial action and insurance claims.

First, insurance funds are only available for remediation costs for a release that occurs during a term of insurance coverage. (See: 415 ILCS 135/45(c)). Conversely, historic release remedial action claims address releases that were identified, and which occurred during specific dates. (See: 415 ILCS 135/40(c)(7)).

Second, the maximum amount of payment available from the DERT Fund is higher for insurance claims (\$500,000/facility) than for historic release remedial action claims (\$300,000/facility).

Third, the deductibles for insurance claims and historic release remedial action claims differ. Any insurance claim submitted under the proposed rules is subject to a \$10,000 deductible, as opposed to the tiered system for historic release deductibles.

IV. Technical Feasibility and Economic Reasonableness

The proposed Title 35 Ill. Adm. Code Part 1501 rules are both technically feasible and economically reasonable.

Based upon the above review, the processes proposed for the regulated community to comply with the licensure and insurance processes attempt to mirror the current rules and practices implemented by the former Council in accordance with the Part 1500 rules. Thus, the proposed Part 1501 rules are technically feasible as they are similar to those that have been in place since January 1, 2000.

The similarities between the current and proposed rules should markedly ease any burden on the regulated community prompted by DERT Fund administration transitioning from the former Council to the Illinois EPA.

In addition, as proposed, the new Part 1501 rules can be implemented without a significant new economic burden to a regulated entity. Again, the procedures and process are similar enough in nature and effect to not create significant new costs associated with compliance or recovery of costs.

The Illinois EPA submits this Technical Support Document in support of adoption of Title 35 Ill. Adm. Code Part 1501 as proposed.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
DRYCLEANER ENVIRONMENTAL)	
RESPONSE TRUST FUND ACT)	
PROPOSAL TO:)	
ADD 35 ILL. ADM. CODE PARTS)	R21-
1501.100 TO 1501.450,)	(Rulemaking – Land)
REPEAL 35 ILL. ADM. CODE PARTS)	
1500.10 THROUGH 1500.70, AND)	
REPEAL 2 ILL. ADM. CODE PARTS)	
3100.10 THROUGH 3100.60)	

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, affirm that I have served the attached **RULEMAKING PROPOSAL**, on behalf of the Illinois EPA, upon the following person(s) by e-mailing it to the e-mail address(es) indicated below or, if no e-mail address is provided, by placing a true copy, in an envelope duly addressed and bearing proper first class postage, in the United States mail at Springfield, Illinois on February 9, 2021:

TO:

Illinois Pollution Control Board
Don Brown, Clerk
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
don.brown@illinois.gov

Illinois Department of Natural Resources
Office of General Counsel
One Natural Resources Way
Springfield, Illinois 62702
renee.snow@illinois.gov

Office of the Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
ntikalsky@atg.state.il.us

I affirm that my e-mail address is john.mcdonough@illinois.gov; the number of pages in the e-mail transmission is 106; and the e-mail transmission took place today before 5:00 PM. If you prefer service by mail, please contact me and a copy will be mailed to you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL

PROTECTION AGENCY

By: /s/ John M. McDonough II
John M. McDonough II
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DATED: February 9, 2021

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