

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	
DRYCLEANER ENVIRONMENTAL	)	
RESPONSE TRUST FUND ACT	)	
PROPOSAL TO:	)	
ADD 35 ILL. ADM. CODE PARTS	)	R21-19
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	)	

**NOTICE**

TO: SEE 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 **PRE-FILED TESTIMONY OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY: MR. JAMES JENNINGS**, a copy of which are herewith serves upon you.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ John M. McDonough II  
John M. McDonough II  
Assistant Counsel  
Division of Legal Counsel

DATED: July 26, 2021

1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
217/782-5544

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**PRE-FILED TESTIMONY OF THE ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY: MR. JAMES JENNINGS**

**I) INTRODUCTION:**

My name is James Jennings. I received my undergraduate degree from the University of Cincinnati, B.M. in 2006, and my Juris Doctor, from the University of Kentucky, College of Law, in 2009.

In October of 2013, I joined the Illinois Environmental Protection Agency (“Agency”) working within the Agency’s Division of Legal Counsel as Assistant Counsel. In that position, I was primarily responsible for providing legal advice related to land regulatory and enforcement matters. Currently, I am the Manager of the Waste Reduction and Compliance Section, within the Agency’s Bureau of Land. I have served in my current position since April 2016.

The Waste Reduction and Compliance Section is responsible for administering numerous reporting and compliance programs. This includes administering many of the Agency’s programs involving financial assurance and accounting requirements set forth in Illinois Pollution Control Board (“Board”) regulations. The Agency’s implementation of the DERT Fund Act responsibilities and duties transferred from the Drycleaner Council, such as licensing, insurance,

and reimbursement reviews and approvals, will be managed and supported by the Waste Reduction and Compliance Section.

**II) BACKGROUND:**

As part of the ordinary course of my responsibilities as Manager of the Waste Reduction and Compliance Section, I participated in the drafting of the rules presented in the above captioned matter.

I also assisted in the preparation of the Illinois EPA's Technical Support Document filed in this matter.

And, as part of my preparation for my work in this rulemaking, I noted and reviewed the following regulatory history. On August 19, 1997, Public Act 90-502 was signed into law creating the Drycleaner Environmental Response Trust Fund Act ("DERT Fund" or "DERT Fund Act"), (415 ILCS 135 *et seq.*), and establishing the Drycleaner Environmental Response Trust Fund Council ("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 liability insurance coverage provided by 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 General Assembly enacted legislation, later becoming Public Act 101-605, which, in part, abolished the Council and its role in administering the DERT Fund Act, effective June 30,

2020. In the months preceding the Council's abolition, the Illinois EPA engaged the Council in an active dialogue in an effort to ease transition of the DERT Fund's administration to the Illinois EPA. Effective July 1, 2020, administration of the DERT Fund and DERT Fund Act was vested with the Illinois EPA.

With the abolition of the Council on June 30, 2020, on July 1, 2020, the former Council's rules became, by statute, Board rules. The Agency's proposed rules within this docket are drafted to utilize these existing rules as a foundation and, where necessary, expand upon them to address issues that the current rules do not cover and revise them for consistency with other Board rules and programs administered by the Agency. Due to the changes required and to foster a clean break from the Council to the Agency, the Illinois EPA deemed that it would be easier to understand for the regulated community and others for the State to repeal the existing drycleaner rules in their entirety and submit the proposed changes as an entire new Part. Therefore, this rulemaking includes the repeal of 35 Ill. Adm. Code Part 1500 and the adoption of an entire new Part, Title 35 Ill. Adm. Code Part 1501. The repeal of Title 2 Ill. Adm. Code Part 3100, which are regulations applicable to the Council relating to Freedom of Information Act requests, is also proposed because the Illinois EPA and Board already have their own respective Freedom of Information Act rules in place.

Because the proposed rules reflect the Council's historic rules and administration of the DERT Fund Act, and to a great extent merely repeats DERT Fund Act provisions, it is not expected to have an adverse environmental, technical, or economic impacts.

### **III) ANALYSIS:**

The Illinois EPA proposes, for the Board's consideration and approval, enactment of a new 35 Illinois Administrative Code Part 1501 and contemporaneous repeal of 35 Illinois

Administrative Code Part 1500, plus repeal of 2 Illinois Administrative Code Part 3100. I provide below general details of the Illinois EPA's proposal.

### **Subpart A: General Provisions**

#### **Section 1501.110- Applicability**

Section 1501.110 identifies the entities regulated under this Part. These rules apply generally to owners and operators of drycleaning facilities, as defined in Section 1501.130.

#### **Section 1501.130- Definitions**

Section 1501.130 includes the definitions of relevant terms used in the proposed rules. The proposed definitions are for the most part taken from the DERT Fund Act and the Council's rules. Maintaining the majority of the Council's terminology, along with the addition of a few new terms, will facilitate a smooth transition between the regulatory structures and minimize confusion within the regulated community, while maintaining existing environmentally protective standards.

#### **Section 1501.160- Recordkeeping and Audits**

Section 1501.160 sets forth the recordkeeping and auditing requirements applicable to owners and operators of drycleaning facilities subject to the proposed rules. These entities are required to maintain all information and data used to demonstrate compliance with this Part, including information used to prepare applications, licenses, fee payments, invoices, budgets, and insurance claims until the latter of three years after:

- the expiration of the owner or operator's final annual license;
- final financial insurance for environmental liability;
- the owner or operator files an Agency-issued No Further Remediation ("NFR") Letter pursuant to 35 Ill. Adm. Code Part 740, Subpart F;
- the Agency issues approval of the owner or operator's final remedial action claim;

- the Agency issues approval of the owner's or operator's final insurance claim; or
- the expiration of any other applicable retention period.

In addition, information related to an appeal, litigation, or other legal dispute must be retained until at least three years after the date of final disposition of that claim.

### **Section 1501.195- Submissions and Certifications**

Section 1501.195 specifies the procedural requirements for submitting information required by the proposed rules to the Agency. Unless stated otherwise in the rules, all submissions to the Agency must be on Agency-prescribed forms and provided to the Agency via certified mail. This proposal is consistent with historic Council practices and is congruent with other similar programs currently administered by the Agency.

There are instances throughout Subpart A of the proposal where the proposed rules reference the Illinois Environmental Protection Act ("EPAAct") (415 ILCS 5/1 *et seq*). These references are meant to provide clarity to the regulated community and other interested parties regarding the impact or interaction between the two statutory provisions, as well as, potential responsibilities under both statutes. Specific instances can be found in proposed Sections: 1501.150 (referencing Section 58.9 of the EPAAct); 1501.170 (referencing the inspection, investigation, and enforcement authority of the EPAAct); 1501.180 (referencing Section 31 of the EPAAct); and 1051.190 (referencing Section 40 of the EPAAct)

### **Subpart B: Licenses**

Illinois law prohibits a drycleaning facility in the State from operating without a license. Subpart B of the Agency's proposal addresses the requirements for obtaining a drycleaning license. As proposed, these procedures are consistent with the Board's existing rules.

**Section 1501.200- General Licensing Provisions**

Section 1501.200 sets forth the generally applicable drycleaner licensing provisions. As in the past, drycleaner licenses will be issued for the calendar year and will expire at the end of the calendar year for which the license was issued. Each year, licensed drycleaning facilities must submit an application for license renewal at least thirty (30) calendar days prior to that license's expiration. And, as before, a new drycleaning facility or a new applicant must apply for and obtain a license prior to initiating drycleaning operations.

Under certain circumstances, the Agency may revoke a drycleaner's license. Those circumstances include, but are not limited to, a drycleaner owner or operator's failure to maintain continuous environmental liability coverage or the Agency determining that the drycleaning facility is not compliant with this Part. In order to revoke a license, the Agency must provide the drycleaner written notice of the reason for revocation and the statutory citation upon which the revocation is based. Thereafter, the owner or operator has forty-five (45) calendar days from the receipt of the notice to respond to the Agency. After the Agency receives the owner or operator's response, if the Agency determines revocation is still warranted, it will provide a written notice to the owner or operator to that effect. Revocation is effective upon the date of the Agency's letter. These procedures are consistent with other comparable notifications issued by the Agency. As with other final Agency decisions under this Part, the revocation is appealable to the Board pursuant to Section 1501.190.

**Section 1501.210- Application Procedures**

Section 1501.210 sets forth the drycleaner license application procedures. To obtain a license, a drycleaning facility must submit a completed application through Agency-prescribed forms. The application will include much of the information historically included in 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;
- 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 completing all required continuing education.

These requirements are consistent with existing Board rules and accordingly will not impose any undue burden on the regulated community.

### **Subpart C: Remedial Action Claims**

Subpart C sets forth the DERT Fund reimbursement procedures for owners and operators of drycleaning facilities. As set forth in the DERT Fund Act, reimbursement is provided for drycleaners that had a release that was discovered between July 1, 1997 and June 30, 2006. These procedures were designed to minimize any new administrative burdens on drycleaners and maintain consistency with existing Board rules.

### **Section 1501.300- General Remedial Action Claims Provisions**

Section 1501.300 includes the general standards for owners or operators of drycleaning facilities that are eligible for reimbursement from the DERT Fund. All eligible claimants must conduct remedial action in accordance with Title XVII of the EPAct to receive reimbursement from the DERT Fund. In addition, the owner or operator of an active drycleaning facility that has either previously received or is currently receiving reimbursement from the DERT fund must

maintain continuous financial insurance for environmental liability in the amount of at least \$500,000. Failure to maintain adequate insurance is grounds for license revocation.

**Section 1501.310- Eligibility**

Section 1501.310 sets forth the eligibility standards for reimbursement from the DERT Fund for remedial action claims. Both inactive and active drycleaning facilities are eligible for reimbursement from the DERT Fund, provided a completed application for remedial action benefits was submitted to the Council on or before June 30, 2005. This Section spells out many of the same limitations included in the DERT Fund Act and existing drycleaner rules, 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 Agency's Site Remediation Program ("SRP").

An active drycleaning facility owner or operator seeking reimbursement for remedial action 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.

**Section 1501.320- Deductible Requirements**

Section 1501.320 sets forth the deductible requirements that are a prerequisite for reimbursement from the DERT Fund. These figures are directly derived from the DERT Fund Act. The chart below reflects the relevant deductible amounts for this subset of releases.

	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

**Section 1501.330- Reimbursement Limitations**

Section 1501.330 sets forth the reimbursement limitations for remedial actions subject to this Part. Reimbursement for eligible remedial action at an active drycleaning facility at the time a claim was submitted may not exceed \$300,000 per facility; reimbursement for remedial action at an “inactive” drycleaning facility at the time a claim was submitted may not exceed \$50,000 per facility. Reimbursement is limited to actual eligible costs that were included in an Agency-approved workplan submitted in accordance with Title XVII of the EPA Act and the SRP rules. Only costs included in an Agency or Council approved budget prior to those costs being incurred are eligible for reimbursement. If an owner or operator of a drycleaning facility seeking reimbursement from the DERT Fund has pollution liability insurance other than insurance supported by the DERT Fund, that coverage is the primary insurance coverage. Consequently, reimbursement from the DERT Fund is limited to the amount that exceeds the policy limits on that coverage.

The proposed rules identify a non-exhaustive list of both eligible and ineligible costs for reimbursement. Eligible costs generally include:

- approved site investigation activities;
- soil, groundwater, and soil gas analysis;
- remedial action 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 under either an Agency or Council approved remedial action plan. Ineligible costs will generally include those such as costs associated with preparing claim submittals, removal of soil that is not contaminated, drycleaning system installation, and legal fees.

#### **Section 1501.340- Claim Prioritization**

Section 1501.340 sets forth criteria for prioritizing claims for reimbursement from the DERT Fund when there is an insufficient balance in the Fund to pay all pending claims. The criteria are designed to help prioritize claims based on the threat a site poses as well as a drycleaner's compliance with program requirements. The criteria include:

- The degree to which human health and the environment is impacted by the release;
- The reduction of risk to human health and environment derived from remedial action compared to the cost of the remedial action;
- The present and planned uses of the impacted property;
- Whether the facility is currently licensed, insured, and all fees and premiums due under this Part have been paid; and
- Whether the claimant failed to provide requested information or documentation to the Agency.

If claim prioritization is necessary, the Agency must post a list of all pending claims on its website so drycleaners can track the status of their pending claim.

#### **Section 1501.350- Claim Procedures**

Section 1501.350 sets forth the process for submitting remedial action reimbursement claims made against the DERT Fund. A claimant may not submit a reimbursement request until after submitting an SRP completion report that demonstrates the work for which reimbursement is being requested has been performed. The Agency will review submitted invoices to determine whether the costs are eligible, within the approved budget and within the range of usual and customary rates for similar or equivalent goods or services. Costs that meet these prerequisites will be approved; those that do not will be reduced to include only approvable costs. Upon the completion of its review, the Agency will issue a letter to the claimant approving, denying, or modifying the requested reimbursement. Any letter denying a claim or modifying a claim will include an explanation of the specific information required for approval, the reason for disapproval or modification, and the corresponding statutory or regulatory citation supporting the Agency's decision. As with other final actions under this Part, the Agency's decision may be subject to appeal. To help provide finality with respect to completed sites and minimize outstanding liabilities to the Fund, all reimbursement requests must be submitted to the Agency within twelve (12) calendar months of the date the Agency issues an NFR Letter for the release that is the subject of the claim.

#### **Subpart D: Insurance Claims**

Subpart D sets forth the insurance provisions covering active drycleaners that may receive reimbursement from the DERT Fund. An owner or operator of a drycleaner may purchase environmental liability coverage under the DERT Fund of up to \$500,000 per drycleaning facility. An owner or operator of an active drycleaning facility is required to purchase the coverage if the

owner or operator previously received or is currently receiving reimbursement from the DERT Fund. As with other Subparts of the proposal, the provisions of this Subpart were designed with an intent to minimize any new administrative burdens on drycleaners and to maintain some consistency with the existing drycleaner rules.

**Section 1501.410- Eligibility**

Section 1501.410 sets forth the eligibility criteria for purchasing environmental liability insurance from the DERT Fund. In general, any active drycleaning facility may be insured under the DERT Fund. However, there are several eligibility thresholds, including:

- Conducting an approved site investigation designed to identify soil or groundwater contamination resulting from the release of a drycleaning solvent;
- Obtaining required licenses and paying all required fees;
- Demonstrating that all drycleaning solvent wastes generated at the facility are managed in accordance with applicable Illinois law;
- Having the required containment dike or structure around each machine;
- Having drycleaning solvent delivered to the facility by means of closed, direct-coupled delivery systems; and
- Paying all insurance premiums.

As with other comparable programs, the Agency will review insurance applications upon receipt of a complete application and payment of the relevant premium. Following Council practice, the proposed rules provide a sixty (60) calendar day grace period for the payment of insurance premiums. Insurance coverage will begin retroactive to the beginning of the relevant coverage period as long as the premium is paid by the end of the grace period. If payment is not made by the end of the grace period, coverage will begin on the date the Agency receives the

payment. Upon completion of its review, the Agency will notify the owner or operator, in writing, of its determination regarding insurance coverage.

During outreach to interested parties, the Agency noted that there are no continuing education or compliance program requirements in the proposed rules. Requirements for any specialized training are to be adopted by the Board, which could be considered and included within this rulemaking (if proposed by the Board or other party) or which, more likely, may be proposed during a subsequent rulemaking under the authority of Section 12(h) of the DERT Fund Act. Additionally, the Agency noted to interested parties that the current requirements pursuant to Section 22.57(c) of the EPA Act, were repealed on July 1, 2020. A 'Board Note' is proposed to reflect the current status of compliance program requirements as of the time of the filing of this proposed rulemaking.

#### **Section 1501.420- Premium and Deductible Requirements**

Section 1501.420 sets forth the premium and deductible standards for insurance under the DERT Fund. For insurance coverage issued between July 1, 2020 and June 30, 2029, the annual premium is \$1,500; the annual premium for coverage issued between July 1, 2029 and January 1, 2030 is \$750 due to that time period being half of a year. Premiums may be paid either annually or semi-annually. The annual payment, or the first semi-annual payment, is due on the first day of the first month of coverage. Second semi-annual payments are due on the first day of the second sixth (6) months of coverage. Premiums cannot be prorated. All insurance claims are subject to a \$10,000 deductible.

#### **Section 1501.430- Coverage Limitations**

Section 1501.430 sets forth the limitations for insurance claims paid from the DERT Fund. Reimbursement for eligible insurance claims is limited to \$500,000 per drycleaning facility. In many respects, the coverage limitations for insurance from the DERT Fund parallel the coverage

limitations for remedial action claims. Reimbursement is limited to actual eligible costs that were included in an approved workplan submitted in accordance with Title XVII of the EPA Act and the SRP rules. Only costs included in a budget approved prior to those costs being incurred are eligible for reimbursement. If an owner or operator has insurance other than the insurance provided by the DERT Fund, such insurance is primary and coverage under the DERT Fund is limited to the amount that exceeds the policy limits on the primary insurance.

The proposed rules identify a non-exhaustive list of both eligible and ineligible costs under insurance, similar to remedial action reimbursement. Eligible costs include:

- approved site investigation activities;
- soil, groundwater, and soil gas analysis;
- remedial action costs; and
- SRP plan and report preparation costs.

Eligible costs must be within the range of usual and customary rates for similar or equivalent goods or services incurred in performance under either an Agency or Council approved remedial action work. Ineligible costs will generally include those costs associated with preparing claim submittals, soil removal, drycleaning system installation, and legal fees.

#### **Section 1501.440- Claim Prioritization**

Section 1501.440 sets forth the criteria for prioritizing pending insurance claims when the DERT Fund has an insufficient balance to cover all pending claims. Unlike remedial action claims, insurance claims prioritization is based on the date of approval, with the earliest approved claims receiving highest priority. In addition, when an insufficient DERT Fund balance triggers prioritization of claims, insurance claims are given priority over remedial action claims. This was done to help prioritize claims under the two different accounts of the DERT Fund: the insurance

account and the remedial action account. This should not have much effect on the payment of prioritized remedial action claims given that insurance claims have been rare in comparison to remedial action claims.

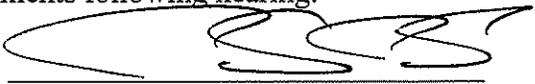
**Section 1501.450- Claim Procedures**

Section 1501.450 sets forth the process for insurance claims made against the DERT Fund. The proposed rules are consistent with the existing drycleaner rules. Upon receipt of a claim, the Agency will review the claim to determine whether it is complete and complies with this Part. After completion of its review, the Agency will notify the applicant, in writing, of its eligibility determination. Following receipt of the Agency's eligibility determination, the claimant may submit a budget and corresponding SRP plan to the Agency for review and approval. For purposes of documenting the costs incurred, a claimant may not submit a reimbursement request until after submitting an SRP completion report reflecting the work for which reimbursement is being requested. The Agency will review submitted invoices to determine whether the submitted actual costs are eligible, within the approved budget and within the range of usual and customary rates for similar or equivalent goods or services. Costs that meet these 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. Any letter denying a claim or modifying a claim will include an explanation of the specific information required for approval, the reason for disapproval or modification, and the corresponding statutory or regulatory citation supporting the Agency's decision. As with other final actions under this Part, the Agency's decision may be subject to appeal. To help provide finality, with respect to completed sites and minimize outstanding liabilities to the Fund, all reimbursement requests must be submitted to the Agency within twelve

(12) calendar months of the date the Agency issues an NFR Letter for the release that is the subject of the claim.

**IV) CONCLUSION:**

The above concludes my pre-filed testimony on behalf of the Illinois Environmental Protection Agency, Bureau of Land, relating to the above captioned rulemaking. The Agency will supplement the testimony herein, as needed or requested, during hearing or as directed by the Hearing Officer or Board within response to comments following hearing.

By: 

James Jennings, Manager  
Waste Reduction and Compliance Section  
Bureau of Land

DATED: July 26, 2021  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

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**CERTIFICATE OF SERVICE**

I, the undersigned, an attorney, affirm that I have served the attached **PRE-FILED TESTIMONY OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY: MR. JAMES JENNINGS**, 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 July 26, 2021:

TO:

Illinois Pollution Control Board  
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Illinois Pollution Control Board  
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I affirm that my e-mail address is john.mcdonough@illinois.gov; the number of pages in the e-mail transmission is 19; 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  
Assistant Counsel  
Division of Legal Counsel

DATED: July 26, 2021

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