

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

August 19, 2021

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 )

**HEARING OFFICER ORDER**

On February 9, 2021, the Illinois Environmental Protection Agency (IEPA) proposed that the Board add Parts 1501.100 through 1501.450 to its rules, and repeal 35 Ill. Admin. Code Parts 1500.10 through 1500.70 and 2 Ill. Admin. Code Parts 3100.10 through 3100.60. *See* 35 IL Admin. Code 1501, 35 Ill. Admin. Code 1500, 2 Ill. Admin. Code 3100.

Pursuant to the 2019 amendments to the Drycleaner Environmental Response Trust Fund Act (“DERT Fund Act”), as of July 1, 2020, the IEPA has now been tasked by the Illinois General Assembly with providing oversight and implementation of the DERT Fund Act and administration of the Drycleaner Environmental Response Trust Fund (“DERT Fund”). The IEPA 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 (2020) and 35 Ill. Adm Code Parts 1500.10 to 1500.70.

The Board and Staff have reviewed the proposed rules, supporting documents and IEPA’s testimony filed on July 26, 2021, and submit with this order their questions to the IEPA, included as Attachment A. Anyone may file a comment, and anyone may respond to the attached questions, as well as any other pre-filed questions in the record.

All filings in this proceeding will be available on the Board’s web page at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). All filings in this proceeding will be available on the Board’s website at <https://pcb.illinois.gov/> in the rulemaking docket R21-19. Unless the Board, hearing officer, Clerk, or procedural rules provide otherwise, all documents in this proceeding must be filed electronically through the Clerk's Office On-Line (COOL). 35 Ill. Adm. Code 101.302(h), 101.1000(c), 101.Subpart J.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'M. Kaminski', with a long horizontal stroke extending to the right.

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## Attachment A

### R21-19: DERT Fund Program Regulations Board Questions for the Illinois Environmental Protection Agency

#### Section 1501.130 Definitions

1. The definition of "Drycleaning operations" refers to "Standard Industrial Classification Industry No. 7215 and No. 7216 in the Standard Industrial Classification Manual (SIC) by the Technical Committee on Industrial Classification." Please comment on whether the specific SIC sections must be incorporated by reference.
2. Please comment on whether the "EPA Act" should be changed to "Act" to be consistent with how the Environmental Protection Act is defined in other Parts of the Board regulations.
3. The term "active drycleaning facility" encompasses both a drycleaning facility actively engaged in drycleaning operations and that is licensed. Is the term "active drycleaning facility" used consistently to mean both active and licensed throughout the proposed regulations?
4. In the definition of "green solvent", should "Council" be replaced with "Agency", or should "Agency" be added?

#### Section 1501.140 Incorporations by Reference

5. Please comment on whether a blank place holder section is needed if there are no documents to be incorporated by reference.

#### Section 1501.160 Recordkeeping and Audits

6. Subsection(a) requires the owners or operators to maintain certain types of information "in accordance with accepted business practices and appropriate accounting procedures and practices." Please comment on whether the specified practices and procedures allow the information to be retained in electronic (digital) format. If not, should the rules specify the format?
7. Subsection (b) requires the owners or operators to provide the Agency or its duly authorized representatives proper facilities for such access, inspection and copying.
  - a. The Council had drycleaning inspectors fluent in Korean. Does the Agency intend to hire drycleaning inspectors fluent in Korean?
  - b. Please clarify whether the Agency staff will employ portable scanners or scanner applications for smartphones to copy the relevant information. If so, should the last sentence in subsection (b) include a reference to "scanning" as well as copying?

- c. Please clarify whether the owners or operators must provide copiers or printers for the Agency staff to print or make copies.
  - d. Please comment on whether it is a common practice to have copiers or printers at drycleaning facilities.
  - e. Will the public have access to view any of the required documentation? If so, under what circumstances would the public have that access?
8. Subsection (c) specifies that “[o]wners 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”, and lists seven different time limitations. Please comment on whether it is acceptable to the Agency if the proposed language is reworded as follows for purposes of clarity:

Owners or operators must maintain the information set forth in subsection (a) and make such available to the Agency until the ~~later~~ latest in time of ~~either~~ the following:

9. Subsection (c)(7) requires information to be maintained until “[t]he expiration of any other applicable record retention period.” Please comment on whether the proposed rules include record retention periods other than those specified in subsection (c). If so, provide citations to those sections.

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

10. Subsection (a) requires “[a]ll submittals to the Agency under this Part must be in the form and in a format prescribed by the Agency.”
- a. Please clarify whether the Agency is developing forms for submittal of information under various sections of Part 1501. If so, would it be possible for the Agency to submit draft forms into the record? If not, please comment on how the Agency plans to disseminate information to the regulated entities.
  - b. The Council had provided documents in both English and Korean. Does the Agency intend to provide written materials in both English and Korean, such as licensing, insurance, and claim forms? Will such written materials be available online as well as in paper form?
11. Subsection (c) requires certification from a Licensed Professional Engineer (LPE) or Licensed Professional Geologist (LPG). Please comment on whether the definitions of LPE and LPG must be included under Section 1501.130.

## **Section 1501.200      General Licensing Provisions**

12. Please clarify whether the prohibition under Subsection (a), which states that “[n]o drycleaning facility in this State shall be operated without a license issued by the Agency for that facility”, is based on the DERT Fund act. If so, please comment on whether the statutory language could be used in subsection (a). If not, please comment whether statutory authority is necessary for the Board to adopt the proposed prohibition.
13. Subsection (d) states that the Agency “may” issue an annual license for an active drycleaning facility after processing a completed license application and proof of licensing fee payment. Please comment on whether the Agency would deny a license after processing a completed application and receiving the fees. If not, should the word “may” be changed to “must”?
14. Subsection (e) states, “If the facility is enrolled in the SRP, all SRP fees due have been paid.” Please comment on whether this provision a prerequisite for obtaining a license. If so, comment on whether subsection (e) should be revised as follows to reflect the proposed intent:
  - e)      If the facility is enrolled in the SRP, the Agency may issue an annual license only if all SRP fees due have been paid.
15. In subsection (g)(3), please confirm that the burden of proof is on the owner or operator to prove compliance with this Part to avoid license revocation. Please clarify what proceeding is being referred to?

## **Section 1501.210      Application Procedures**

16. Subsection (a)(2)(C) requires an applicant to have “successfully completed all continuing education requirements adopted by the Board.”
  - a. Please propose continuing education requirements that the Agency believes would be reasonable and appropriate.
  - b. Does the Agency intend to provide continuing education opportunities for drycleaners to meet the Board continuing education requirements?
  - c. If not, who is expected to provide these opportunities to drycleaners to meet the Board continuing education requirements?
  - d. Will such continuing education requirements be available in English and Korean?

## **Section 1501.220      Annual License Fee**

17. Please clarify whether the licensing fees specified in this section are based on those specified in the DERT Fund Act. If so, would it be possible to italicize the relevant

portions of the proposed language to indicate that the fees are set in compliance with the statutory requirements?

18. Subsections (b)(3)(A) and (B) specifies multipliers for chlorine-based drycleaning solvents to determine an equivalent value of hydrocarbon-based drycleaning solvents. Please clarify whether the multipliers are based on the licensing fee structure proposed for those solvents. If not, please explain the bases for the proposed multipliers.
19. Subsection (b)(4) refers to drycleaning machines with a solvent “retainer” and one or more drycleaning machines without a solvent “reclaimer”. Please clarify whether the term “retainer” should be “reclaimer”.

### **Section 1501.230      Drycleaning Green Solvent**

20. Subsection (b) specifies that “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.”
  - a. What is the justification for the Board to determine whether a solvent should be considered a “green solvent”? Is there a reason the Agency cannot make this determination without Board approval?
  - b. As proposed, please clarify whether the Agency’s recommendation to the Board under this subsection would be in the form of a rulemaking proposal.
  - c. If so, please comment on whether the proposed language should be revised to require the Agency to propose an amendment of Part 1501 rather than filing a recommendation.
21. Please clarify whether the green solvent “Green Earth” under subsection (c)(3) is a registered trademark of the Green Earth Cleaning company. If so, should the rule include the registered trademark symbol for “Green Earth”?

### **Section 1501.310      Eligibility**

22. Subsection (b) states “A completed application for remedial action benefits must have been submitted to the Council on or before June 30, 2005.” Please clarify how many claims are:
  - a. Fully determined by the Council, but have not been reimbursed from the DERT Fund; and
  - b. Filed, but pending full determination.

23. Please explain in detail how pending applications for remedial action will be resolved.
24. Please clarify how applications for remedial action benefits that are submitted after June 30, 2005 are treated.
25. Please explain if and how else persons may apply for funding or reimbursement of remedial action costs from releases discovered after June 30, 2006.
26. Please clarify how a person could submit an application for remedial action benefits for a release discovered between July 1, 2006 and June 30, 2007 that also satisfies the June 30, 2005 application deadline in subsection (b).

### **Section 1501.330 Reimbursement Limitations**

27. Subsection (b) states that reimbursement is only paid for releases discovered on or after July 1, 1997, and on or before June 30, 2006. Is it the intent of the Agency that DERT Fund reimbursement is not available for releases discovered after June 30, 2006?
  - a. Please clarify how many claims are currently pending for DERT Fund reimbursement.

### **Section 1501.350 Claim Procedures**

28. Subsection (a) requires “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.”
  - a. Please clarify whether the “rules in effect” prior to Part 1501 are those under Part 1500.
  - b. Please provide an estimate of the number of existing claims that the Agency expects to be reviewed under the rules in effect prior to Part 1501.
  - c. If there are significant number of existing claims waiting for the Agency’s review, please comment on whether it would be prudent to not repeal the existing rules until the completion of the Agency’s review and any potential appeals.
29. In the Public Act 101-400 revisions to 415 ILCS 135/25(d), the General Assembly provided that the Board may adopt rules allowing the direct payment from the Fund to a contractor who performs remediation. Sections 1501.350(d)(4)(B) and 1501.450(d)(4)(B) state: “[i]n 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.” Please provide the justification for disallowing direct payment from the Office of the Comptroller to a contractor who performs remediation.

**Section 1501.360      Administrative Assessments for Eligible Inactive Drycleaning Facilities**

30. Does Section 1501.360 apply to all inactive drycleaning facilities that are eligible for reimbursement, or only those that have made a claim?

**Section 1501.410      Eligibility**

31. Regarding the proposed provisions in this section, the Agency states 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.” Jennings PFT at 14.

- a. Please comment on whether adding training requirements would be an effective means of keeping regulated entities up to date on the proposed insurance filing requirements.
- b. If so, comment on whether the Agency is willing to propose applicable specialized training provisions that the Board could consider in this rulemaking.
- c. If not, comment on whether the Agency plans to file a proposal under Section 12(h) of the DERT Fund Act addressing specialized training requirements, and, if so, when that will be.

32. Please clarify whether subsection (a)(1) requires an owner or operator of an active drycleaning facility to conduct a site investigation of the drycleaning facility prior to being able to obtain environmental liability coverage under the Fund.

- a. If the site investigation discovers a release, will this mean that the drycleaner would not be able to obtain insurance?
- b. How will this situation be handled by the Agency?

**Section 1501.420      Premium and Deductible Requirements**

33. The previous Council regulations provided for proration of the environmental liability insurance coverage under the Fund. What is the basis for denying proration in subsection (a)(2)?