

ILLINOIS POLLUTION CONTROL BOARD
May 16, 2024

IN THE MATTER OF:)
)
DRYCLEANER ENVIRONMENTAL) R21-19(A)
RESPONSE TRUST FUND ACT PROPOSAL) (Rulemaking – Land)
TO ADD 35 ILL. ADM. CODE PART 1501,)
REPEAL 35 ILL. ADM. CODE PART 1500,)
AND REPEAL 2 ILL. ADM. CODE PART)
3100)

Proposed Rule. Proposal for Public Comment.

OPINION AND ORDER OF THE BOARD (by J. Van Wie):

On January 5, 2023, the Board adopted rules implementing the 2019 amendments to the Drycleaner Environmental Response Trust Fund Act (DERT Fund Act). Specifically, the Board added a new Part 1501 to its rules, which transferred oversight and implementation of the Drycleaner Environmental Response Trust Fund (DERT Fund) from the Drycleaner Environmental Response Trust Fund Council (Council) to the Illinois Environmental Protection Agency (the Agency or IEPA). In addition, the Board repealed the provisions of 35 Ill. Adm. Code 1500 and 2 Ill. Adm. Code 3100. In that rulemaking, docket R21-19, the Board opened sub-docket A to address the Board’s authority to establish a continuing education and compliance program because of the lack of sufficient information on this issue in the record.

Today, in sub-docket A, the Board presents—for a 30-day public comment period—its proposed amendments concerning continuing education and compliance program requirements for owners and operators of active drycleaning facilities. The proposed rules add two new sections to Part 1501 (Sections 1501.165 and 1501.185), and amend Section 1501.160. The rule text appears in the order at the end of this opinion. The Board will accept comments until June 17, 2024, the first business day 30 days after the date of this order.

In the opinion below, the Board describes the procedural history of this sub-docket and briefly summarizes IEPA’s original proposal. The Board then explains its reasoning behind the proposed amendments, and asks for specific input on the proposal from the participants, including IEPA and the regulated community. In addition, the Board details the next steps in this rulemaking. Finally, the order following this opinion presents the proposed amendments for public comment.

**PROCEDURAL HISTORY, SUMMARY
OF IEPA’S ORIGINAL PROPOSAL AND STATUTORY BACKGROUND**

Procedural History

On February 9, 2021, the IEPA filed a rulemaking proposal with the Board. The rule proposal was meant to effectuate the 2019 amendments to the Drycleaner Environmental Response Trust Fund Act (DERT Fund Act), which transferred oversight and implementation of the Drycleaner Environmental Response Trust Fund (DERT Fund) from the Council to the IEPA. In addition, the amendments gave the Board authority to adopt rules establishing continuing education and compliance program requirements under the DERT Fund Program. *See* 415 ILCS 135/12(h) (2022); *see also* 35 Ill. Adm. Code 1501. On January 5, 2023, the Board adopted the final rule, with an effective date of January 17, 2023. *In re* R21-19, January 5, 2023; 47 Ill. Reg. 1354 (Jan. 27, 2023).

In its March 3, 2022 first-notice order, the Board directed its Clerk to open a sub-docket to address continuing education and compliance program requirements under Section 12(h) of the DERT Fund Act. Drycleaner Environmental Response Trust Fund Act Proposal to Add 35 Ill. Adm. Code Part 1501, Repeal 35 Ill. Adm. Code Part 1500, and Repeal 2 Ill. Adm. Code Part 3100, R21-19, slip. op. at 11 (Mar. 3, 2022) (First Notice). The Board requested comments, information, and proposed rule text from drycleaning stakeholders on identifying or developing minimum continuing education and compliance program requirements. *Id.* The Board also encouraged the IEPA to work with stakeholders on proposed rule language that would capture the approach that the IEPA described in its proposal. *Id.*

The Board asked for comments to be filed by July 1, 2022, 120 days from the date of the first-notice order. First Notice at 11. On June 29, 2022, the Board received one public comment in docket R21-19 from Sung Kang relating to compliance program requirements. On July 1, 2022, the Board received a status update in this sub-docket from the IEPA. This update noted that IEPA received information in emails from Dong Chul Kim on behalf of the Illinois Korean American Drycleaners Association (KADA) on April 5, 2022, and Sung Kang on behalf of the National Drycleaners Institute (NDI) on May 11, 2022. IEPA Status Update, R21-19(A) (July 1, 2022). IEPA indicated that KADA and NDI's submittals appeared to provide information the Board requested to adopt rules pertaining to continuing education requirements for minimum number of continuing education credits, describing the subjects to be covered, and or identifying the type of inspections to occur. *Id.* IEPA noted that the submittals did not reflect a consensus among the drycleaning community on how it should be regulated. *Id.*

IEPA's Proposal

The IEPA's proposal in R21-19 stated that the proposed amendments, "will incorporate [IEPA's] authorities and clarify its duties and responsibilities under the DERT Fund Act." Ag. Prop. at 2. IEPA asserted that, "[t]he proposed amendments represent the simplest solution to allow [IEPA] to conduct the powers, duties, rights and responsibilities under the DERT Fund Act." *Id.* at 3. Pursuant to the 2019 amendments to the DERT Fund Act, as of July 1, 2020, IEPA has responsibility for the implementation of the DERT Fund Act and administration of the DERT Fund. *Id.* at 1. The IEPA proposed the amendments in R21-19 to effectuate the transfer of administration and oversight of, and responsibilities under, the DERT Fund from the Council to the IEPA under Public Act 101-0400 (signed into law Aug. 16, 2019). *Id.* at 2-3. In R1-19, IEPA proposed and the Board adopted a new Part 1501 to effectuate these changes to the DERT Fund Act. The Board's analysis of the Agency's original proposal is detailed in R21-19.

Statutory Background

The amendments to the DERT Fund Act made by Public Act 101-400 also gave the Board authority related to continuing education and a compliance program. As amended, the DERT Fund Act provides:

Section 12(h): In addition to the rules described above, the Board is hereby authorized to adopt rules establishing minimum continuing education and compliance program requirements for owners and operators of active drycleaning facilities. Board rules establishing minimum continuing education requirements shall, among other things, identify the minimum number of continuing education credits that must be obtained and describe the specific subjects to be covered in continuing education programs. Board rules establishing minimum compliance program requirements shall, among other things, identify the type of inspections that must be conducted. The rules adopted by the Board under this subsection (h) may also provide an exemption from continuing education requirements for persons who have, for at least 10 consecutive years on or after January 1, 2009, owned or operated a drying facility licensed under this Act. 415 ILCS 135/12(h) (2022).

Public Hearing

The Board today presents its proposed rule on the matter of continuing education and compliance program requirements for public comment without holding any further hearings to those already held in R21-19. However, the Agency or members of the public may request a hearing within the 30-day public comment period and the Board may hold additional hearings if necessary.

THE BOARD'S PROPOSAL

The Board today proposes regulations for public comment concerning continuing education credits and a compliance program requirements, including voluntary disclosure of non-compliance, under the DERT Fund Act. 415 ILCS 135/12(h) (2022). This proposal amends the Board's DERT Fund Program rules under Part 1501. 35 Ill. Adm. Code 1501. As discussed below, the Board's proposal includes the additions of new Section 1501.165, Continuing Education, and Section 1501.185, Voluntary Disclosure. The proposal also includes a minor amendment to existing recordkeeping and audit requirements under Section 1501.160. Finally, the Board poses specific questions to IEPA and the drycleaning community on its proposed rule text.

Proposed new Section 1501.165 establishes a continuing education credits system, compliance program guidelines for meeting continuing education, and compliance requirements.

Proposed new Section 1501.185 establishes guidelines for voluntary disclosure of non-compliance with the program requirements.

The amendment to the recordkeeping and audit requirements under Section 1501.160 adds “continuing education documents” to the list of required data or information that drycleaner owners or operators must keep to comply with the DERT Fund Act.

First, concerning the proposed Continuing Education section, the Board seeks input from the participants on whether to specifically include that proposed Section 1501.165(a)(2) is subject to the criminal penalties of Section 69.5 of the DERT Fund Act (415 ILCS 135/69.5) for false statements. In particular, the Board seeks input from both the IEPA and the Illinois Attorney General’s office on these issues. As proposed, Section 1501.165(a)(2) provides:

The owner or operator must certify on its renewal application, that it has successfully completed all continuing education requirements specified in subsections (a) and (b), or is exempt under subsection (c).

Next, the Board also seeks input from IEPA and the drycleaning community on the list of continuing education program topics provided in proposed Section 1501.165(a)(3).

Lastly, the proposed voluntary disclosure provisions under Section 1501.185 follow the format for environmental audits found in Section 42(i) of the Environmental Protection Act (415 ILCS 5/42(i) (2022)), but is not verbatim. For instance, the proposed rule omits reference to citizen suits, as only the Attorney General’s Office can bring a suit under the DERT Fund Act.

The Board poses two questions for IEPA on proposed Section 1501.185. First, the Board asks for input on whether the proposed Voluntary Disclosure section should instead be part of existing Section 1501.180, Penalties. Second, the Board asks for the participants’ input on whether to specify a certain percentage of reduction in penalty under the proposed rules. For example, the rule could provide that certain discretionary factors may be used in mitigation of any penalty, but not specify a 75% or 100% reduction in the penalty amount. In particular, the Board seeks the input of the Attorney General’s Office and the IEPA on this matter as the primary agencies tasked with environmental law enforcement and compliance.

DISCUSSION

The Board has considered the comments of Mr. Kang and the IEPA, which are reflected in the amendments proposed today. Given the lack of consensus among the drycleaning community noted by the IEPA, the Board finds that the proposed amendments concerning the continuing education and compliance program requirements for drycleaners should be further explored. To effectuate this process, the Board presents its proposed rule text for 30-day public comment. Anyone may file a comment or respond to the questions directed to the IEPA or the Attorney General’s Office within the same deadline. The proposed rules appear in the order at the end of this opinion.

Public comments on the Board’s proposed rules must be filed by June 17, 2024 electronically through the Clerk’s Office On-Line (COOL) at pcb.illinois.gov. 35 Ill. Adm. Code 101.100. The comments must indicate the docket number R21-19(A) of this rulemaking. Questions about electronic filing should be directed to the Board’s Clerk at (312) 814-3461. At

the close of this public comment period, the Board will reexamine the issues and determine whether to proceed to hearing.

ORDER

The Board presents the following for public comment:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE N: DRYCLEANING
CHAPTER I: POLLUTION CONTROL BOARD

PART 1501
DRYCLEANER ENVIRONMENTAL RESPONSE
TRUST FUND PROGRAM

SUBPART A: GENERAL PROVISIONS

Section	
1501.100	Scope and Purpose
1501.110	Applicability
1501.120	Severability
1501.130	Definitions
1501.150	Limited Liability
1501.160	Recordkeeping and Audits
<u>1501.165</u>	<u>Continuing Education</u>
1501.170	Agency Authority and Inspections
1501.180	Penalties
<u>1501.185</u>	<u>Voluntary Disclosure</u>
1501.190	Review of Final Decisions
1501.195	Submissions and Certifications

SUBPART B: LICENSES

Section	
1501.200	General Licensing Provisions
1501.210	Application Procedures
1501.220	Annual License Fee
1501.230	Drycleaning Green Solvents

SUBPART C: REMEDIAL ACTION CLAIMS

Section	
1501.300	General Remedial Action Claims Provisions
1501.310	Eligibility
1501.320	Deductible Requirements
1501.330	Reimbursement Limitations

1501.340	Payment Prioritization
1501.350	Claim Procedures
1501.360	Administrative Assessments for Eligible Inactive Drycleaning Facilities

SUBPART D: INSURANCE CLAIMS

Section	
1501.400	General Insurance Provisions
1501.410	Eligibility
1501.420	Premium and Deductible Requirements
1501.430	Coverage Reimbursement Limitations
1501.440	Claim Prioritization
1501.450	Claim Procedures

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 R21-19 at 47 Ill. Reg.1354, effective January 17, 2023; amended in R21-19(A) at 48 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

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 information and data used in the preparation of or to support all applications, licenses, licensing fee payments, solvent invoices, solvent logs, ownership information, continuing education documents, 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. The owner or operator may maintain the information under this subsection in an electronic format.
- 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 facilities for such access, inspection and copying.
- c) Owners or operators must make information maintained under subsection (a) available to the Agency until the latest of the following:
 - 1) The expiration of three years after the expiration of the owners' or operators' final annual license;

- 2) The expiration of three years after the expiration of the owners' or operators' final financial insurance for environmental liability;
- 3) The expiration of three 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 years after the Agency issues approval of the owners' or operators' final remedial action claim;
- 5) The expiration of three 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 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.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 1501.165 Continuing Education

a) Continuing Education Requirements

- 1) To renew a license, an owner or operator must complete 5 hours of continuing education every calendar year.
- 2) The owner or operator must certify on its renewal application, that it has successfully completed all continuing education requirements in subsections (a) and (b), or is exempt under subsection (c).
- 3) Continuing education programs must provide information on the following subjects:
 - A) Hazardous waste;
 - B) Treatment, storage and disposal methods of hazardous waste;
 - C) Tips for minimizing waste;
 - D) Pollution prevention methods;
 - E) Environmental laws and regulations related to hazardous substances;

- F) Record keeping for hazardous substances and solvents;
- G) Solvent handling and reduction;
- H) Regulatory permitting;
- I) Cleanup requirements for hazardous substances;
- J) Requirements for reporting a release of a hazardous substance;
- K) Solvent reduction;
- L) State and federal regulations involving drycleaning; and
- M) Topics related to drycleaning environmental issues.

- 4) One continuing education hour is equal to 60 minutes of attendance. After completion of the initial continuing education credit hour, credit may be given in 30-minute increments.
- 5) Continuing education credit hours used to satisfy the continuing education requirements of another jurisdiction may be used to fulfill the continuing education requirements of the State of Illinois, as long as all criteria in subsection (a) are met.

b) Certification of Compliance with Continuing Education Requirements

- 1) Continuing education hours may be earned by verified attendance (e.g., certificate of attendance or certificate of completion) at or participation in a program or course that meets the requirements in subsection (a)(3).
- 2) Continuing education credits may be earned for successful completion of a course (e.g., by mail, computer, pre-recorded online course/program, live online course/program, etc.) that meets the requirements in subsection (a)(3).
- 3) An owner or operator must obtain a certificate of attendance or certificate of completion after completing any continuing education program. The certificate must contain:
 - A) The title of the program;
 - B) The program presenter;
 - C) The name of the organization providing program;

D) The date and location of program (if online, state "online"); and

E) The length of the program.

4) An owner or operator must retain or otherwise produce evidence of compliance with the continuing education requirements as required under Section 1501.160.

c) Waiver of Continuing Education Requirements

Owners and operators who have, for at least 10 consecutive years on or after January 1, 2009 owned or operated a drycleaning facility licensed under the Drycleaner Environmental Response Trust Fund Act are exempt from the requirement to comply with the continuing education requirements under this Section.

(Source: Added at 48 Ill. Reg. _____, effective _____)

Section 1501.185 Voluntary Disclosure

a) An owner or operator who voluntarily self-discloses non-compliance to the Agency, of which the Agency had been unaware, is entitled to a 100% reduction in the portion of the penalty that is not based on the economic benefit of non-compliance if the owner or operator can establish the following:

1) that the non-compliance was discovered through an environmental audit or a compliance management system documented by the owner or operator as a part of its due diligence in preventing, detecting, and correcting violations;

2) that the non-compliance was disclosed in writing within 30 days of the date on which the owner or operator discovered it;

3) that the non-compliance was discovered and disclosed prior to:

A) the commencement of an Agency inspection, investigation, or request for information;

B) the filing of a complaint by the Illinois Attorney General;

C) the reporting of the non-compliance by an employee of the owner or operator without the owner or operator's knowledge; or

D) imminent discovery of the non-compliance by the Agency;

- 4) that the non-compliance is being corrected and any environmental harm is being remediated in a timely manner;
 - 5) that the owner or operator agrees to prevent a recurrence of the non-compliance;
 - 6) that no related non-compliance events have occurred in the past 3 years at the same drycleaning facility or in the past 5 years as part of a pattern at multiple drycleaning facilities owned or operated by the same person;
 - 7) that the non-compliance did not result in serious actual harm or present an imminent and substantial endangerment to human health or the environment or violate the specific terms of any judicial or administrative order or consent agreement;
 - 8) that the owner or operator cooperates as reasonably requested by the Agency after the disclosure; and
 - 9) that the non-compliance was identified voluntarily and not through a monitoring, sampling, or auditing procedure that is required by statute, rule, permit, judicial or administrative order, or consent agreement.
- b) If an owner or operator can establish all of the criteria under subsection (a) except for subsection (a)(1), the owner or operator is entitled to a 75% reduction in the portion of the penalty that is not based upon the economic benefit of non-compliance.

(Source: Added at 48 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on May 16, 2024, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board