

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
DRYCLEANER ENVIRONMENTAL)	
RESPONSE TRUST FUND ACT)	
PROPOSAL TO:)	
ADD 35 ILL. ADM. CODE PARTS)	R21-019(A)
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)	

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on Monday, June 17, 2024, I caused to be filed with the Clerk of the Illinois Pollution Control Board in the above referenced matter the via the “COOL” System, the Appearance of Molly Kordas and the Illinois Attorney General’s Office Response to the Board’s Questions in the May 16, 2024, Order which is hereto attached and hereby served upon you.

/s/ Karen W. Howard
 Karen W. Howard
 Assistant Attorney General
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 Environmental Bureau North
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SERVICE LIST

<p><u>Department of Natural Resources</u></p> <p>Renee Snow General Counsel One Resource Way Springfield, IL 62702-1271 renee.snow@illinois.gov</p>	<p><u>Illinois Environmental Protection Agency</u></p> <p>Nick San Diego Deputy General 1021 N. Grand Avenue East P.O. Box 19276 Springfield, IL 62794 Nick.M.SanDiego@Illinois.gov</p> <p>Anupama Paruchuri Assistant Counsel 1021 N. Grand Avenue East P.O. Box 19276 Springfield, IL 62794 Anupama.Paruchuri@Illinois.gov</p>
<p><u>Illinois Pollution Control Board</u></p> <p>Carlie Leoni Hearing Officer 60 E. Van Buren Street, Suite 630 Chicago, IL 60605 Carlie.Leoni@Illinois.Gov</p>	<p><u>Illinois Professional Drycleaners & Launderers</u></p> <p>Susan Kratz Executive Director P.O. Box 308 Channahon, IL 60410 ipdlassociation@gmail.com</p>
<p><u>Illinois Korean American Drycleaners Assoc.</u></p> <p>Jae Ung Yoon President 4953 N. Damen Avenue Chicago, IL 60625 kada.illinois@yahoo.com</p>	<p><u>National Drycleaners Institute</u></p> <p>Sung Kang 1206 Remington Road Schaumburg, IL 60173 Kangsungdol@gmail.com</p>

CERTIFICATE OF SERVICE

I, KAREN W. HOWARD, an Assistant Attorney General, hereby certify that on this 17th day of June, 2024, I caused to be served upon those listed on the Service List the Appearance of Molly Kordas and Illinois Attorney General's Office Response to Questions in the Board's May 16, 2024 Order.

/s/ Karen W. Howard
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
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DRYCLEANER ENVIRONMENTAL)	
RESPONSE TRUST FUND ACT)	
PROPOSAL TO:)	
ADD 35 ILL. ADM. CODE PARTS)	R21-019(A)
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)	

APPEARANCE

I, Molly Kordas, hereby file my appearance in this proceeding for the Illinois Attorney General’s Office, and consent to receipt of e-mail service.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL, Attorney General
of the State of Illinois

By: /s/ Molly Kordas
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN MATTER OF:)	
)	R 21-19(A)
DRYCLEANER ENVIRONMENTAL RESPONSE)		(Rulemaking – Land)
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)		

Illinois Attorney General’s Office’s Responses to the Board’s Questions in its May 16, 2024 Order

The Illinois Attorney General’s Office provides these responses, on behalf of the People of the State of Illinois, to the Illinois Pollution Control Board’s (the “Board”) questions set forth in the Board’s Opinion and Order dated May 16, 2024.

On May 16, 2024, the Board issued its Opinion and Order in this rulemaking subdocket (R21-19(A)) with its proposed amendments concerning continuing education and compliance program requirements for owners and operators of active drycleaning facilities and setting a 30-day public comment period (“May 16, 2024 Order”). In the May 16, 2024 Order, the Board seeks specific input from the Illinois Attorney General’s Office (“AGO”) as to two questions, and the AGO provides its responses to those questions below.

I. Should the Board specifically include in proposed Section 1501.165(a)(2) that the required continuing education compliance certifications are subject to the criminal penalties for false statements contained in Section 69.5 of the DERT Fund Act (415 ILCS 135/69.5)?

No. Section 69.5 of the Drycleaner Environmental Response Trust Fund Act (“DERT Fund Act”) (415 ILCS 135/69.5) has been existing law since 2020 and does not need to be specifically referenced in proposed Section 1501.165(a)(2) for its delineated penalties to be enforceable. As stated in Section 69.5:

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 this Act or a rule adopted under this Act commits a Class 4 felony, and each such statement or writing shall be considered a separate Class 4 felony. (415 ILCS 135/69.5)

Section 69.5 clearly states that if any person makes a false statement to the Illinois Environmental Protection Agency, such as a statement in a certification that continuing education requirements have been met, and which statement is required by a rule adopted under this Act, such as proposed Section 1501.165(a)(2), which will be a rule adopted under Section 12(h) of the DERT Fund Act (135 ILCS 135/12(h)), then that person commits a Class 4 felony.

Section 12(h) specifically authorizes the Board to adopt rules establishing minimum continuing education and compliance program requirements, thus, this proposed Section 1501.165(a)(2) is a rule that comes within the scope of the Section 69.5 penalties.

A specific reference to Section 69.5 in the proposed Continuing Education Section 1501.165 is not required as “all citizens are presumptively charged with knowledge of the law.” *People v. Bocclair*, 202 Ill.2d 89, 104 (2002) citing *Atkins v. Parker*, 472 U.S. 115, 130 (1985). If the Board decides that requiring certification for continuing education is necessary to promote its educational goals, then those that submit false certifications will be potentially subject to criminal penalties and potentially subject to enforcement actions.

II. Should the Board specify a certain percentage of reduction in penalty in proposed Section 1501.185?

No. The Board should not specify certain percentages available to reduce the penalties for an owner or operator who voluntarily self-discloses non-compliance to the Agency as such delineation could be interpreted as modifying the penalties specified in Sections 69 and 69.5 of the DERT Fund Act (415 ILCS 135/69 and 69.5).

The General Assembly has provided with considerable detail the penalty provisions related to violation of the DERT Fund Act. In the Environmental Protection Act, the General Assembly provided for a possible reduction of the statutory penalties where self-disclosure of the violations occurred. The General Assembly has made no such modification to the penalty provisions in the DERT Fund Act, 415 ILCS 135/69.

If the Board proceeds with proposing the provisions of Section 1501.185 as to any percentage reduction of the penalty, it is recommended that the Board also specifically identify in Section 1501.185 the applicable provisions in the DERT Fund Act supporting the rule such as the Board has done in Section 1501.180 Penalties, e.g., the citation to 415 ILCS 135/69(b) within Section 1501.180(a). Although the Board references Section 42(i) of the Environmental Protection Act in its May 16, 2024 Order, Section 42(i) is a provision in the Environmental Protection Act (415 ILCS 5/42(i) (2022)), and not the DERT Fund Act (415 ILCS 135/1 *et seq.* (2022)). Finally, the proposed Section 1501.185 would impact the Attorney General’s enforcement discretion to pursue statutorily required penalties for violations of the DERT Fund Act.

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PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL, Attorney General
of the State of Illinois

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