

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

TO: Don A. Brown, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601-3218

See attached Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board an APPEARANCE and ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S PUBLIC COMMENT IN RESPONSE TO THE BOARD’S MAY 16, 2024, ORDER, copies of which are served upon you along with this notice.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Anupama Paruchuri
Anupama Paruchuri
Assistant Counsel
Division of Legal Counsel

DATED: June 17, 2024

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P.O. Box 19276
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APPEARANCE

The undersigned hereby enters her appearance as an attorney on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Anupama Paruchuri
Anupama Paruchuri
Assistant Counsel
Division of Legal Counsel

DATED: June 3, 2024

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**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S PUBLIC COMMENT IN
RESPONSE TO THE BOARD’S MAY 16, 2024, ORDER**

Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), through its attorneys and in response to the Illinois Pollution Control Board (“Board”) May 16, 2024, Opinion and Order, submits the following public comment.

As noted by the Board, the rules proposed by the Agency in 2021 were “meant to effectuate the 2019 amendments to the DERT Fund Act, 415 ILCS 135, which transferred oversight and implementation of the DERT Fund from the DERT Fund Council to the IEPA.” Also as noted by the Board, the 2019 amendments to the DERT Fund Act included authority for the Board to adopt rules establishing continuing education and compliance program requirements. *See* 415 ILCS 135/12(h). This rule authority was included in the 2019 legislative amendments because industry stakeholders could not agree on which – or even whether – continuing education and compliance program requirements should be continued from the DERT Fund Council’s tenure over the Fund. The addition of 415 ILCS 135/12(h) would allow stakeholders who desired to maintain continuing education or compliance requirements to propose those requirements in the context of a Board rulemaking.

Based on the comments submitted in this subdocket, there still appears to be a lack of consensus among the industry stakeholders regarding continuing education and compliance program requirements. While the Board has attempted to provide a proposal to which the

stakeholders can respond, the comments submitted only raise or expressly ask more questions about potential requirements. Illinois EPA does not have a position on whether the continuing education or compliance program requirements that existed under the DERT Fund should continue. Continuing education and compliance program requirements are not needed for Illinois EPA's oversight and implementation of the DERT Fund.

Nevertheless, the Agency suggests the Board not adopt any such requirements until there is more clarity on what requirements should be adopted – or whether they should be adopted at all. If continuing education or compliance program requirements are adopted by the Board, Illinois EPA has many concerns – particularly the anticipated Agency involvement and oversight. To answer some of the questions in the public comments, the Agency would not have the resources to review and approve speakers, topics, and content of education programs. Nor would it have the resources to establish the content of education programs, provide educational materials, verify instructor qualifications, certify or license instructors, or otherwise oversee education or compliance programs.

Illinois EPA also notes that many requirements under the DERT Fund Act, such as licensing and solvent taxes, will sunset by 2030. As such, the Agency may end up expending already limited resources to implement rules that will have an impact for only a few years. Additionally, as one of the enforcement agencies for the DERT Fund program, Illinois EPA believes the continuing education requirements (and the proposed voluntary disclosure option and penalty reduction language) would likely not accomplish the type of compliance required under 35 Ill. Admin. Code 1501, the DERT Fund Act, and the Environmental Protection Act (415 ILCS 5), nor the overall goal of protecting or improving human health and the environment. Ultimately, Illinois EPA would rely on a certification as proposed in Section 1501.165 to verify compliance

with education rules, and upon its own inspections of drycleaner facilities to confirm compliance with operational requirements.

As to the Board's questions regarding the subdocket proposal, Illinois EPA responds as follows:

1. As to the proposed language for Section 1501.165, the Board asked for input "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." Illinois EPA reads Section 69.5 of the DERT Fund Act to apply to all statements materially related to or required by a rule adopted under the DERT Fund Act, including proposed 1501.165(a)(2).
2. The Board asked for input "on the list of continuing education program topics provided in proposed Section 1501.165(a)(3)." As continuing education requirements are not necessary for Illinois EPA's administration of the DERT Fund, the Agency will defer any comments on the list of continuing education topics to the stakeholders interested in having the Board adopt continuing education requirements.
3. As to the proposed language for 35 Ill. Admin. Code 1501.185, Voluntary Disclosure, the Board asked for input "on whether the proposed Voluntary Disclosure section should instead be part of existing Section 1501.180, Penalties." Illinois EPA does not see a need to repeat the voluntary disclosure provisions of Section 42(i) of the Environmental Protection Act in the DERT Fund rules. The statutory provisions will apply to the extent they apply regardless of whether they are repeated in the rules.
4. The Board asked for 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.” As with the voluntary disclosure provisions, Illinois EPA does not see a need to include penalty reduction provisions of Section 42(i) of the Environmental Protection Act in the DERT Fund rules. The statutory provisions will apply to the extent they apply regardless of whether they are repeated in the rules.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Anupama Paruchuri
Anupama Paruchuri
Assistant Counsel
Division of Legal Counsel

DATED: June 17, 2024

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have electronically served the attached APPEARANCE and ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S PUBLIC COMMENT IN RESPONSE TO THE BOARD’S MAY 16, 2024, ORDER upon the following:

See attached Service List

I affirm that my e-mail address is anupama.paruchuri@illinois.gov; the number of pages in the e-mail transmission is eight (8); and the e-mail transmission took place before 5:00 p.m. on June 17, 2024.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Anupama Paruchuri
Anupama Paruchuri
Assistant Counsel
Division of Legal Counsel

DATED: June 17, 2024

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SERVICE LIST

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