Notice of Rulemaking Hearing
Drycleaner Environmental Response Board
Department of Environment and Conservation
Division of Remediation

There will be a hearing before the staff of the Drycleaner Environmental Response Board Tennessee Department of Environment & Conservation, Division of Remediation, Drycleaner Environmental Response Program, to receive public comments regarding the promulgation of amendments to Rule 1200-1-17, Drycleaner Environmental Response Program, pursuant to Tennessee Code Annotated 68-217-101 et. seq., the "Tennessee Drycleaner's Environmental Response Act". The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the 17th floor Conference Room of the L&C Tower located at 401 Church Street, Nashville, Tennessee from 6:00 PM to 8:00 PM Central Time on the 29th day of March, 2006. Written comments will be considered if received by the close of business, April 5, 2006, in the office of Steve Goins, Division of Remediation, 401 Church Street, L&C Annex, 4th Floor, Nashville, TN 37243-1538.

Individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment & Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten days prior to the hearing date to allow time to provide such aid or services. Contact the ADA Coordinator at 1-866-253-5827 for further information. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

Substance of Proposed Rule Amendments

1. Rule 1200-1-17-.02 Definitions is modified by deleting all paragraph numbers and adding the following definition in alphabetical order so that the definition reads as follows:

   "Applicant" means a PEP who submits an application for entry and participation in the program for environmental response activities.

Authority: T.C.A. §§68-217-101, et seq. and 4-5-201 et seq.

2. Paragraph (4)(a) of Rule 1200-1-17-.03 Registration, Fees and Surcharges, Certificate Issuance is amended so that, as amended, Rule 1200-1-17-.03(4)(a) shall read:

   (a) Certificates of Registration for each facility will be issued to the person who demonstrates substantial compliance, as determined by the department, with the Act and program regulations, including but not limited to applicable BMPs; submits a completed registration form; pays the annual registration fee; and timely submits quarterly solvent reports. The certificate will contain the facility identification number, facility name and the facility address. The issuance of a certificate does not imply Fund eligibility or compliance with other regulations.

Authority: T.C.A. §§4-5-201 et seq. and 68-217-101 et seq.

3. Paragraph (3)(a)5 of Rule 1200-1-17-.04 Best Management Practices is amended by deleting it in its entirety.

4. Paragraph (3)(a)6 of Rule 1200-1-17-.04 Best Management Practices is amended by renumbering the subparagraph as Rule 1200-1-17-.04(3)(a)5

5. Paragraph (3)(b)3 of Rule 1200-1-17-.04 Best Management Practices is amended by deleting it in its entirety.

Authority: T.C.A. §§68-217-101, et seq. and 4-5-201 et seq.

6. The title of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended so that, as amended, the title for Rule 1200-1-17-.05 shall read:

   Qualifications and Procedures for Environmental Response Activities

7. Paragraph (1)(a) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (a) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(1)(a) shall read:

   (a) Purpose. This rule is promulgated to establish guidelines and procedures by which applicants investigate and remediate facilities in order to preserve the right to seek reimbursement of expenses from the Fund.

8. Paragraph (1)(b) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (b) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(1)(b) shall read:

   (b) Applicability. Requirements of this rule apply to all applicants.

9. Paragraph (2)(b) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (b) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(2)(b) shall read:

   (b) An application must be submitted by the applicant to the Department in a format determined by the Department. The application shall be complete, legible and accurate, and shall include the following:

10. Paragraph (2)(b)2 of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph 2 in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(2)(b)2 shall read:

    2. In all applications, a person with appropriate legal authority shall grant the applicant, the applicant's contractor(s), and the Department the right of ingress and egress to the facility to perform the activities authorized by this program.

11. Paragraph (2)(c) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (c) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(2)(c) shall read:

    (c) The Department shall confirm in writing to the applicant that an application has been received and identify any alleged deficiencies. Subject to the availability of DCERP funds, and after receipt and evaluation of a complete application, the Department shall notify the applicant to proceed with a facility inspection if the site is an active facility. The Department may also require a facility inspection of an abandoned facility. Based on the applicant's Fund eligibility certification in the application, the facility inspection shall preliminarily be considered a Fund eligible expense, subject to the appropriate deductible.

12. Paragraph (3) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting paragraph (3) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(3) shall read:

    (3) Facility Inspection

If a facility inspection is required by the Department, the applicant shall perform the facility inspection. At a minimum, the facility inspection shall include a records review and an on-site inspection. The records review shall include, but not necessarily be limited to, documentation of the determination of FTEs (for those years fees were based on FTEs), solvent purchases, waste handling practices, equipment maintenance and repair, equipment upgrades, and other items requested by the Department. The on-site inspection shall include, but not necessarily be limited to, evaluation of equipment, operations, containment, solvent storage, waste disposal, signs or evidence of a release, compliance with BMPs, and other items requested by the Department. The applicant shall submit a facility inspection report to the Department in a format and according to a schedule determined by the Department. A facility may be reinspected by Department staff.

13. Paragraph (4)(a) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (a) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(4)(a) shall read:

    (a) After review of the application and facility inspection, the Department shall notify in writing all applicants of its determination on acceptance of the site into the program and Fund eligibility. If the site is denied entry into the program or Fund access based on the facility inspection, the notification shall include the reasons for denial and the opportunity to cure deficiencies, as provided below. The reasons for denial shall include the failure:

14 Paragraph (4)(b)4 of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph 4 in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(4)(b)4 shall read:

    4. Notwithstanding the provisions of Rule 1200-1-17-.04(3)(b) and Rule 1200-1-17-.04(4)(b), if the Department's records reveal that applicable Class 1 and Class 2 BMPs have not been implemented, the facility operator will not be accepted into the program and will not be eligible for reimbursement of response costs other than the initial facility inspection, without regard to the 2007 deadline in those subparagraphs. Except as provided in Rule .04(7), the facility operator will be accepted into the program and will be eligible for fund reimbursement after correcting any such deficiencies. The applicant may request follow-up inspections after correcting deficiencies. However, all facility inspections subsequent to the initial facility inspection conducted at the applicant's request will not be Fund reimbursable.

15. Paragraph (4)(b)7 of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph 7 in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(4)(b)7 shall read:

    7. If any deficiencies are not corrected within a time frame specified by the Department, the applicant will be denied Fund access. If Fund access is denied, the applicant shall have 30 days from the Department's mailing of the notice to appeal the denial to the Board. If the Board upholds the denial of Fund access, or if an appeal is not made within 30 days, the Department may revoke the operator's Certificate of Registration, notify solvent suppliers of such revocation and initiate activities to evaluate the site under Rule 1200-1-13, et seq., "Inactive Hazardous Substance Site Remedial Action Program."

16. Paragraph (5)(a) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (a) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(5)(a) shall read:

    (a) For sites which receive a notice of Fund eligibility, the applicant shall perform a prioritization investigation according to a format established by the Department. The applicant shall submit a work plan; a cost proposal including, but not limited to, a breakdown of cost by category listed in the reimbursement request; a maximum cost which may not be exceeded in the prioritization investigation; and a schedule for implementation of the prioritization investigation. The applicant

shall make any changes to either the work plan, cost proposal or schedule of implementation required by the Department. Subject to the availability of DCERP funds, approval of the work plan, cost proposal, and approval of the proposed schedule, the Department shall authorize implementation and notify the applicant to proceed with the prioritization investigation. The applicant shall implement the prioritization investigation as required by the Department. Following the prioritization investigation, the applicant shall submit the results of the prioritization investigation to the Department according to a schedule and in a format determined by the Department. The applicant may perform activities in addition to work requested by the Department at the prioritization investigation stage; however, only activities required by Department guidance or specifically pre-approved by the Department shall be Fund eligible expenses for the prioritization investigation. If additional activities are performed, results of the additional work shall be submitted to the Department within 45 days of the completion of any phase of additional activities.

17. Paragraph (6)(a) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (a) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(6)(a) shall read:

    (a) The Department shall utilize the prioritization investigation report and other applicable information to prioritize approved sites for further investigation or interim action.

18. Paragraph (6)(b) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (b) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(6)(b) shall read:

    (b) Subject to the availability of DCERP funds, additional activities will be approved at sites in accordance with the priority ranking schedule.

19. Paragraph (7)(a) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting paragraph (a) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(7)(a) shall read:

    (a) Interim Action

        1. The Department shall notify the applicant of the Department's determination of the need for interim action within 60 days of receiving a complete prioritization investigation. Subject to the availability of funds, the Department shall notify the applicant to prepare a work plan, cost proposal, and schedule of implementation to perform interim action, which shall be submitted to the Department according to the schedule and in the format required by the Department. The applicant shall make any changes to the work plan, cost proposal, or schedule of implementation required by the Department.

        2. Subject to the availability of funds, approval of the work plan, approval of the cost proposal, and approval of the proposed schedule the Department shall authorize implementation and notify the applicant to proceed with the interim action. The applicant shall implement the interim action as approved by the Department. The DCERP Board may declare the site ineligible for reimbursement if the interim action is not performed in accordance with the schedule and work plan requested by the Department.

        3. Following the interim action, the applicant shall submit the interim action report to the Department according to a schedule and in a format determined by the Department. If the applicant or the Department performed interim action at the site, then the site will be reprioritized for investigation.

20. Paragraph (7)(b) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting paragraph (b) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(7)(b) shall read:

    (b) Solvent Impact Assessments

    1. The Department shall notify the applicant of the Department's determination of the need for solvent impact assessment within 60 days of receiving a complete prioritization investigation. Subject to the availability of funds, the Department shall notify the applicant to prepare a work plan, cost proposal, and schedule of implementation to perform the solvent impact assessment, which shall be submitted to the Department for approval according to the schedule and in the format required by the Department. The applicant shall make any changes to the work plan, cost proposal, or schedule of implementation required by the Department.

    2. Subject to the availability of funds, approval of the work plan, approval of the cost proposal, and approval of the proposed schedule the Department shall authorize implementation and notify the applicant to proceed with the solvent impact assessment. The applicant shall implement the solvent impact assessment as approved by the Department. Following the investigation, the applicant shall submit the solvent impact assessment report to the Department according to a schedule and in a format determined by the Department.

    3. Subject to Rule .08(6)(g) minor adjustments in the approved work plan, as required based on field or subsurface conditions, do not require approval by the Department.

21. Paragraph (7)(c) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting paragraph (c) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(7)(c) shall read:

    (c) Supplemental Investigations

    1. If the Department requires the applicant to perform supplemental investigation at the site the applicant shall submit an addendum work plan to conduct the necessary investigation, a cost proposal, and schedule to the Department according to the schedule and in the format requested by the Department. The applicant shall make any changes to the work plan, cost proposal or schedule of implementation required by the Department.

    2. Subject to the availability of DCERP funds, approval of the work plan, approval of the cost proposal, and approval of the proposed schedule, the Department shall authorize implementation and notify the applicant to implement the work plan as approved.

    3. Following completion of the supplemental investigation, the applicant shall submit the investigation results to the Department according to a schedule and in the format requested by the Department.

22. Paragraph (8) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting paragraph (8) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(8) shall read:

    (8) If requested in writing by the Department, following the Department's review of the investigation report, the applicant shall submit a remedial alternatives study report to the Department according to a schedule and in a format requested by the Department. The remedial alternatives study format may include a description of proposed pilot testing, response action, or alternative remedial approaches. A cost proposal for the proposed activities outlined in the remedial alternatives study may also be required at this time.

23. Paragraph (9)(c) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (c) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(9)(c) shall read:

    (c) The Department shall notify the applicant, in writing, of the site's remediation priority ranking group and the relative ranking for the site within that group. Sites in the program are at any time subject to reprioritization by the Department based upon the receipt of additional data that may affect the prioritization determination.

24. Paragraph (9)(e) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (e) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(9)(e) shall read:

    (e) Subject to the availability of DCERP funds, remedial actions will be approved at sites in accordance with the remediation priority ranking schedule. For sites which have equivalent ranking status within a single group, funds will be authorized according to the chronological order in which the applications were received.

25. Paragraph (10) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting paragraph (10) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(10) shall read:

    (10) Implementation of Remediation

    1. Based on availability of funds, the site ranking, and the remediation required, the Department shall notify a applicant to prepare a work plan, cost proposal and schedule of implementation to perform the remediation activities. The applicant shall make any changes or modifications to the work plan, cost proposal, or schedule of implementation required by the Department. Subject to the availability of funds, approval of the work plan, approval of the cost proposal, and approval of the proposed schedule of implementation, the Department shall authorize implementation and notify the applicant to perform the necessary approved remedial action at the site. The applicant shall implement the remediation plan as approved by the Department.

       The DCERP Board may declare a site ineligible for reimbursement if a remedial action is not performed in accordance with the schedule and work plan requested by the Department.

    2. Following the implementation of the approved work plan, the applicant shall submit to the Department a remediation report containing a description of the activities undertaken during the remediation, observations made, sampling results, and other information requested by the Department according to a schedule and format determined by the Department. If the remediation will require long-term operation and maintenance or monitoring, the applicant shall submit the remediation report after all approved activities other than operation and maintenance or monitoring have been completed.

    3. If the remediation requires long-term operation and maintenance (O&M) or monitoring, the applicant shall prepare an O&M or monitoring plan according to a schedule and in the format required by the Department and submit the O&M or monitoring plan to the Department. The applicant shall make any changes or modifications to the plan required by the Department. The applicant shall implement the O&M or monitoring plan as approved.

26. Paragraph (11) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting paragraph (11) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(11) shall read:

    (11) After all required interim action, investigation, remediation, or other required activities are completed at the site, a response complete letter shall be issued to the applicant by the Department.

Following issuance of the response complete letter and reimbursement of all authorized costs, the site shall return to non-Fund eligible status and, unless otherwise approved by the Board, the applicant may no longer receive Fund reimbursements without reapplying for Fund eligibility. Nothing in this paragraph shall prevent the Department from issuing an interim status letter while O&M or monitoring at a site is ongoing, or from continuing Fund reimbursement of authorized costs related to such O&M or monitoring after issuance of an interim status letter.

27. Paragraph (12)(c) of Rule 1200-1-17-.05 Program Qualifications and Procedures for the Tennessee Drycleaner Environmental Response Program is amended by deleting subparagraph (c) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(12)(c) shall read:

    (c) Notwithstanding the request for and provision of oversight under the program pursuant to either paragraph (a) or (b) above, any applicant may apply for entry of a facility in the program under Rule 1200-1-17-.05 and proceed to comply with the requirements there under; provided, that any costs incurred under oversight pursuant to (a) or (b) above shall not be reimbursable from the program Fund. The program oversight fee under (b) above will be applied to the deductible should any applicant enter said facility into the reimbursement program.

Authority: T.C.A. §§4-5-201 et seq. and 68-217-101 et seq.

28. Paragraph (4) of Rule 1200-1-17-.06 Withdrawing an Applicant's Grant of Approval is amended by deleting paragraph (4) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.06(4) shall read:

    (4) Except as provided in Rule .06(5), if a person becomes ineligible for Fund reimbursement because of conduct occurring after the granting of the petition for entry into the program, another applicant may only obtain reimbursement from the Fund for the site only so long as all requirements for the site, including the payment of registration fees, surcharges, and penalties thereon are met.

Authority: T.C.A. §§68-217-101, et seq. and 4-5-201 et seq.

29. Paragraph (1)(c) of Rule 1200-1-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund is amended by deleting subparagraph (c) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.08(1)(c) shall read:

    (c) Clean-Up Before the Designation of Fund Monies

        1. In the event that an applicant for any reason undertakes actions, which are reimbursable under the Act after entry into the DCERP program, but before Fund money is designated for investigation or remediation of the site under the priority ranking system, the applicant may perform approved actions in accordance with this Rule Chapter. Funds shall be obligated for and reimbursed to the applicant for eligible expenses when funds become available pursuant to the priority ranking system.

        2. An applicant that performs approved actions in accordance with this Rule Chapter shall be eligible for reimbursement according to the law, regulations and guidance in effect at the time the activities were performed. Applicants performing activities under this subparagraph must meet all requirements for fund eligibility applicable at the time the activities are performed in order to receive future reimbursement.

        3. Only work plans and cost proposals approved in writing by the DCERP staff after the effective date of these rules are applicable for reimbursement.

30. Paragraph (2)(b) of Rule 1200-1-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund is amended by deleting subparagraph (b) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.08(2)(b) shall read:

(b) Each applicant requesting reimbursement of expenditures approved by the Board or the Department is required to accept responsibility for incurring costs associated with each request for reimbursement, based on the facility classification in Rule 1200-1-17-.03(3)(c) in the following amounts (deductibles):

Category	% of Each Reimbursement	Maximum
1	5%	$5,000 per site, per clean-up
2	10%	$10,000 per site, per clean-up
3	15%	$15,000 per site, per clean-up
Abandoned Drycleaning Facility	25%	$25,000 per site, per clean-up
In-state wholesale distribution facility	25%	$25,000 per site, per clean-up

An impacted third party's deductible is the same as the facility for which Fund coverage is sought.

31. The introductory clause of Paragraph (5) of Rule 1200-1-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund is amended by deleting the introductory clause in its entirety and adding the following language, so that, as amended, the introductory clause to Rule 1200-1-17-.08(5) shall read:

Maintaining Fund Eligibility

Applicants must meet the following requirements in order to maintain Fund eligibility:

32. The introductory clause of Paragraph (6) of Rule 1200-1-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund is amended by deleting the introductory clause in its entirety and adding the following language, so that, as amended, the introductory clause to Rule 1200-1-17-.08(6) shall read:

Requirements for Fund Reimbursement of Response Costs

An applicant who is Fund eligible is entitled to reimbursement of response costs for approved investigation and cleanup costs from the Fund subject to the following provisions:

33. Paragraph (6)(a) of Rule 1200-1-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund is amended by deleting subparagraph (a) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.08(6)(a) shall read:

(a) Applicants must perform initial response actions in accordance with Rule .04 including initial abatement measures and free product removal necessary to properly stabilize a site and to prevent significant continuing damage to the environment or risk to human health.

34. Paragraph (6)(b) of Rule 1200-1-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund is amended by deleting subparagraph (b) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.08(6)(b) shall read:

(b) Applicants must select a contractor from the Department's Drycleaner Approved Contractor (DCAC) list. The Department must be notified in writing of such a selection within thirty (30) days or other time specified by the Department. A contractual agreement must be established between the applicant and the contractor. The Department must be provided a letter signed by both parties confirming that a contractual relationship exists for environmental response actions.

35. Paragraph (6)(e) of Rule 1200-1-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund is amended by deleting subparagraph (e) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.08(6)(e) shall read:

(e) In addition to the requirements of .08(6)(c), the Department may request and upon that request the applicant shall submit an estimate of the total cost of remediation for the site which will be used by the Board and Department in projecting future funding requirements for the Fund. The estimate shall be updated by the applicant as more complete information regarding a site becomes available.

36. Paragraph (7)(b) of Rule 1200-1-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund is amended by deleting subparagraph (b) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.08(7)(b) shall read:

(b) The application shall contain the following statement which shall be signed by the applicant and the project manager of the DCAC:

1. I certify to the best of my knowledge and belief: that a release of drycleaning solvent has occurred from the operation of the subject active or abandoned drycleaning facility or instate wholesale distribution facility; that the costs presented herein represent actual costs incurred in the performance of response actions at this site during the period of time indicated on this application; and that no charges are presented as part of this application that do not directly relate to the performance of response actions related to the release of solvent at this site.

2. Any material misrepresentation or omission regarding said application may be considered willful noncompliance with these regulations and may serve as a sufficient basis for the Department's denial of the application and access to Fund reimbursement.

37. Paragraph (8) of Rule 1200-1-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund is amended by deleting paragraph (8) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.08(8) shall read:

(8) Fund Payment Procedures

(a) Payments from the Fund will be made directly to the applicant in cases where the applicant submits documentation verifying it has paid authorized costs in excess of the applicable deductible.

(b) Where the applicant has submitted an acceptable application for payment for response actions, but has not paid for these activities or claims, payments will be made by a check written to both the applicant and the contractor(s) performing the work, less the applicable deductible.

(c) The applicant is responsible for final payments to the contractor(s) performing the work including program deductibles. The applicant is responsible for making timely payments to the contractor(s).

(d) The Department shall review applications for payment within (90) days of receipt of a properly completed application. The Department shall issue either a letter of application approval or a status review letter within (90) days of receipt of an application. A status review letter from the Department to the applicant shall note such items as: what clarifications or additional information, if any, are needed in order to complete the application review and what problems were encountered, if any, in interpreting or evaluating the application.

If all costs are considered to be reasonable and eligible for reimbursement, payment will be issued within forty-five (45) days of approval by the Department. If certain costs are considered unreasonable or ineligible for reimbursement, the Department shall issue a check for the amount of the application not in question, give notice to the applicant of those costs denied reimbursement and the reasons for denial, and provide a forty-five (45) day period in which the applicant or DCAC may present such information as is necessary to justify the disallowed costs. Following review of such information, the Department may agree to pay the

previously disallowed costs, or any portion thereof, or may again disallow the costs for payment based on material non-compliance with these rules or administrative guidance issued hereunder.

Authority: T.C.A. §§ 4-5-201 et seq. and 68-217-101 et seq.

38. The introductory clause of Rule 1200-1-17-.09 Contractors is amended by deleting the introductory clause in its entirety and adding the following language, so that, as amended, the introductory clause to Rule 1200-1-17-.09 shall read:

    Contractors are not beneficiaries of this Fund and shall have no right of claim against it. And any and all claims shall be against the applicant who hired the contractor. An applicant can assign its rights to reimbursement from the Fund to its contractor for reimbursement amounts arising under the contract.

    Neither an applicant nor the applicant's contractor shall file false or inaccurate information with the Department. Both the applicant and the applicant's contractor are required to follow the methods and procedures established by the DCERP for actions related to, but not limited to, release response, facility inspections, investigations, and remediation of sites. The applicant is required to compile and maintain copies of all technical or other documentation and reports required by the Department in the event that the contractor ceases to exist.

39. Paragraph (3)(n) of Rule 1200-1-17-.09 Contractors is amended by deleting subparagraph (n) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.09(3)(n) shall read:

    (n) If it becomes reasonably apparent, while conducting environmental response activities, that an interim action is warranted to abate or mitigate an imminent and substantial danger to human health or the environment, the DCAC shall take such action within twenty-four (24) hours after discovery of the danger and shall provide notice to the applicant of said action.

Authority: T.C.A. §§68-217-101, et seq. and 4-5-201 et seq.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Department of Environment and Conservation, Drycleaner Environmental Response Program.

Steve Goins, Technical Secretary
Drycleaner Environmental Response Board

Subscribed and sworn to before me this the 30th day of January, 2006.

Teresa H. Lewis
Notary Public

TERESA H. LEWIS NOTARY PUBLIC AT LARGE WILSON CO. TENN.

My commission expires on the 22nd day of December, 2007.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30 day of Jan., 2006.

Riley C. Darnell
Secretary of State

By: _____

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