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Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1200-01-17	Drycleaner Environmental Response Program
Rule Number	**Rule Title**
1200-01-17-.01	Drycleaner Environmental Response Program: General
1200-01-17-.02	Definitions
1200-01-17-.03	Registration, Fees and Surcharges, Certificate Issuance
1200-01-17-.04	Best Management Practices
1200-01-17-.05	Qualifications and Procedures for Environmental Response Activities
1200-01-17-.06	Withdrawing and Applicant's Grant of Approval
1200-01-17-.07	Reserved for Cleanup Goals / Cleanup Actions
1200-01-17-.08	Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund
1200-01-17-.09	Contractors
1200-01-17-.10	Enforcement

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

Chapter 1200-01-17
Drycleaner Environmental Response Program

Amendment

Chapter 1200-01-17 Drycleaner Environmental Response Program is amended by deleting it in its entirety and replacing it with the follow Chapter to read as follows:

Chapter 1200-01-17
Drycleaner Environmental Response Program

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1200-01-17-.01	Drycleaner Environmental Response Program: General	1200-01-17-.06	Withdrawing an Applicant's Grant of Approval
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1200-01-17-.03	Registration, Fees and Surcharges, Certificate Issuance	1200-01-17-.08	Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund
1200-01-17-.04	Best Management Practices	1200-01-17-.09	Contractors
1200-01-17-.05	Qualifications and Procedures for Environmental Response Activities	1200-01-17-.10	Enforcement

1200-01-17-.01 Drycleaner Environmental Response Program: General.

(1) Purpose, Scope, and Applicability - This rule provides definitions of terms, general standards and procedures, and overview information applicable to these Rules.

(2) Rule Structure - These Rules are organized, numbered, and referenced according to the following outline form:

(1) Paragraph

(a) Subparagraph

1. Part

(i) Subpart

(I) Item

I. Subitem

A. Section

(A) Subsection.

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

1200-01-17-.02 Definitions.

Definitions - When used in Chapter 1200-01-17, the following terms have the meanings given below unless otherwise specified:

(1) "Abandoned Drycleaning Facility" means any real property premises or individual leasehold space on which a drycleaning facility formerly operated.

(2) "Act" means the "Drycleaner's Environmental Response Act", as amended, T.C.A. §68-217-101, et seq.

(3) "Applicant" means a potentially eligible party who submits an application for entry and participation in the program for environmental responses activities.

(4) "Application" means the act of applying and/or the form or document upon which a request is made. For purposes of these rules the terms application and petition are interchangeable.

(5) "Best Management Practices" or "BMP" means those procedures, methods, equipment selections, or other practices as described in Rule 1200-01-17-.04 , which when implemented, reduce or prevent the generation of wastes and/or releases of chemicals or other pollutants to the environment.

(6) "Chlorofluorocarbon", or "CFC", means one of a group of chemical compounds composed only of carbon, chlorine, fluorine, and hydrogen.

(7) "Commissioner" means the Commissioner of the Department of Environment and Conservation, or the Commissioner's designee.

(8) "Dense Non-Aqueous Solvent or Product" means any chemical or mixture of chemicals, other than water-based solvent, that is used in the drycleaning of clothes and that does not float on water (in pure form has a specific gravity greater than 1.0).

(9) "Department" means the Department of Environment and Conservation.

(10) "Drycleaner Environmental Response Fund" refers to the fund established under T.C.A. §68-217- 101, et seq.

(11) "Drycleaner Environmental Response Program", or "DCERP", means that program which is established under T.C.A. §68-217-101, et seq., and these rules.

(12) "Drycleaning Facility" means any commercial facility located in this state which is engaged in on-site drycleaning operations, other than:

(a) A coin-operated drycleaning operation;

(b) A facility located on a United States military base or owned by the United States, or any department or agency thereof;

(c) A commercial uniform service and/or linen supply facility; or

(d) A facility owned by the state or any agency or department thereof.

(13) "Drycleaner Approved Contractor", or "DCAC", means a contractor who has met the qualification requirements as set forth in these rules and has been specifically designated by the Department to be an approved contractor in the drycleaner environmental response program.

(14) "Drycleaning Operations" means cleaning of apparel and household fabrics, using one or more drycleaning solvents, including, but not limited to, those businesses described in Standard Industrial Classification (SIC) Code No. 7216.

(15) "Drycleaning Solvent" or "Solvent" means any and all non-aqueous solvents or products used, or intended for use, in the cleaning of garments and other fabrics at a drycleaning facility and includes, but is not limited to, dense non-aqueous solvents such as chlorinated solvents like perchloroethylene (perc) also known as tetrachloroethylene, and light non-aqueous solvents such as petroleum-based solvents like Stoddard Solvent, and the products into which all such solvents or products degrade.

(16) "Facility" means an active or abandoned drycleaning facility or an in-state wholesale distribution facility.

(17) "Full-Time Equivalent Employee" means the total number of hours worked (per drycleaning facility) by all full-time and part-time employees, for the previous calendar year, excluding the owner/manager, divided by the number of weeks of operation, then divided by forty (40). This hereafter shall be known as "full-time equivalent (FTE)".

(18) "Fund" means the Drycleaner Environmental Response Fund as defined in paragraph (10) of this rule.

(19) "Hydrocarbon-Based Drycleaning Solvent" means a light non-aqueous solvent or product that is used as a primary cleaning agent in drycleaning operations and includes, but is not limited to, petroleum solvents such as Stoddard solvent.

(20) "Immediate Investigation Needed Site" means a site identified by the Department, based on information and analytical data provided in the prioritization investigation report, that exhibits conditions or contaminant concentrations such that a solvent impact assessment needs to be implemented in as timely a manner as possible in order to define the extent of probable soil or groundwater contamination.

(21) "Immediate Remedial Action Needed Site" means a site that has been identified by the Department as a result of a solvent impact assessment as posing a potential threat to human health or the environment. Given the level and nature of identified contaminant impacts these sites require an immediate remedial action.

(22) "Impacted Third Party" means a lessor of real property on which a drycleaning facility or an in-state wholesale distribution facility is located, a property owner whose real property is adversely environmentally impacted by a release from a drycleaning facility or in-state wholesale distribution facility, or their predecessors, successors or assigns, mortgagees, predecessors-in-title, and successors-in-title.

(23) "In-State Wholesale Distribution Facility" means a place of business located in this state of a wholesale distributor or any real property premises or individual leasehold space located in this state, occupied by an in-state wholesale distribution facility after June 13, 1995.

(24) "Interim Action Needed Site" means a site that has been classified by the Department as potentially posing a hazard of direct human contact or substantial environmental exposure to drycleaning solvent.

(25) "Light Non-Aqueous Solvent or Product" means any chemical or mixture of chemicals, other than water-based solvent, that is used in the drycleaning of clothes and that floats on water (in pure form has a specific gravity less than 1.0).

(26) "MACT" means maximum achievable control technology. It is a case by case determination of what constitutes a maximum achievable reduction of hazardous air pollutants considering the costs of achieving the emission reduction and any non-air health and environmental impacts and energy requirements. MACT may include but is not limited to: control equipment; work practice standards; emission standards; process modifications, or raw materials substitution and/or reformulation.

(27) "Monitoring Only Site" means a site that has been identified by the Department as a result of a solvent impact assessment that exhibits detectable contaminant concentrations in soil or groundwater, but does not require other remedial action under these rules. These sites will require periodic monitoring in order to ensure stabilization or a decrease in contaminant concentrations over time.

(28) "No Remedial Action Required Site" means a site that has been identified by the Department as a result of a solvent impact assessment that does not require any remedial action or further remedial action. These sites may have previously completed Department-required activities under one or more of the higher priority remediation categories.

(29) "Non-Hydrocarbon-Based Drycleaning Solvent" means a dense non-aqueous solvent or product that is used as a primary cleaning agent in drycleaning operations and includes, but is not limited to, halogenated chemical compounds such as perchloroethylene, trichloroethylene, and chlorofluorocarbons.

(30) "Non-Time Critical Investigation Site" means a site identified by the Department, based on information and analytical data provided in the prioritization investigation report, that does not exhibit conditions or contaminant concentrations to a degree that justifies an immediate solvent impact assessment, but will require an investigation in the future.

(31) "Operator" means any person or persons with the responsibility for operation of a drycleaning facility or in-state wholesale distribution facility or that has an ownership interest in the drycleaning operation or wholesale distributor.

(32) "Operation" with respect to a facility means maintaining or management.

(33) "Owner" with respect to a facility, means to own part or all of the real property of the facility.

(34) "Person" means an individual, proprietorship, partnership, trust, estate, corporation, limited liability company, association, Tennessee or other state agency, U. S. or other federal agency, municipality, political subdivision, or officers thereof.

(35) "Potentially Eligible Party", or "PEP", means an active drycleaning facility owner or operator, or current or prior abandoned facility owner or operator, or in-state wholesale distribution facility owner or operator, or impacted third party who is potentially eligible to participate in the drycleaner environmental response program and Fund.

(36) "Release" means any spilling, pouring, overfilling, leaking, leaching, emitting, discharging, or escaping of drycleaning solvents from a drycleaning facility or an in-state wholesale distribution facility or its associated piping which impacts groundwater, surface water, surface or subsurface soils.

(37) "Remedial Action Pending Site" means a site that has been identified by the Department as a result of a solvent impact assessment that exhibits contaminant concentrations above cleanup levels. Given the level and nature of identified contaminant impacts these sites will require remedial actions, but not immediately.

(38) "Site" means the aerial extent of contamination and all suitable areas in very close proximity to the contamination necessary for the implementation of response actions.

(39) "Transfer Machine" means a type of drycleaning machine, or the process, in which wet clothes are manually transferred from the washer unit to the dryer unit.

(40) "Wholesale Distributor" means a person or company whose primary business is selling drycleaning solvents and supplies to in-state or out-of-state drycleaning facilities. Primary business means where the percentage of the person's or company's gross receipts from the sale of drycleaning solvents and supplies to such drycleaning facilities equals or exceeds twenty percent (20%) of total gross receipts.

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

1200-01-17-.03 Registration, Fees and Surcharges, Certificate Issuance.

(1) Purpose - The purpose of this rule is to establish a system and schedule for registration and collection of fees.

(2) Applicability - This rule applies to the following:

(a) All operators of drycleaning facilities conducting or intending to conduct drycleaning operations;

(b) All operators of in-state wholesale distribution facilities;

(c) Current or prior owners or operators of abandoned drycleaning facilities;

(d) All drycleaning solvent suppliers who sell or transfer solvent to Tennessee drycleaning facilities; and

(e) Impacted third parties.

(3) Annual Registration Fees

(a) Duty to Register

1. Each year, every facility must be registered with the Department by one of the persons described in subparagraphs (2)(a), (b), or (d) of this rule.

2. Persons registering a facility shall respond to all inquiries on the registration form completely and truthfully. On any registration form submitted after October 15, 1997, any material misrepresentation or omission regarding said registration may be considered willful noncompliance with these rules and may serve as sufficient basis for the Department's denial of an application for entry into the program, or for revocation or non-renewal of a registration issued in reliance on said representation, or for a denial or withdrawal of a grant for entry into the program.

(b) Current or prior owners or operators of abandoned drycleaning sites may register said sites in accordance with T.C.A. §68-217-106(b). The interest payable shall be in accordance with Article 11, Section 7 of the Constitution of the State of Tennessee.

(c) 1. Beginning in calendar year 2011, each active drycleaning facility shall pay an annual per-site registration fee as follows:

(i) Each year the number of active drycleaner facilities will be divided by the Department into quintiles (groups of 20%) by type of solvent (light or dense) and according to their solvent usage, from lowest to highest;

(ii) The Department shall determine the solvent usage of an active drycleaner facility by determining the quantity of solvent purchased including what was reported on the quarterly reports submitted in accordance with subparagraph (6)(b) of this rule for the fiscal year from when the annual per site registration fee is due;

(iii) The fee for each solvent group shall be $500, $1,000, $1,500 $2,000 and $2,500, respectively; and

(iv) The registration fees of subparts (i) through (iii) of this part shall be suspended for facilities that use light non-aqueous drycleaning solvent or product and shall be replaced with a registration fee of $500 per year provided DCERP records indicate that dense non-aqueous drycleaning solvent or product has never been used on the premises or by the facility and provided that the drycleaning operator will certify to the best of his or her knowledge and belief, that dense non-aqueous drycleaning solvent or product has never been used at the facility. Should dense non-aqueous drycleaning solvent or product subsequently be discovered to have been used by or at the facility, the operator shall pay the amount equal to the net amount of suspended registration fees that would have been assessed if the facility had reported the use of dense non-aqueous drycleaning solvent or product plus penalties and interest.

2. Abandoned facilities shall pay an annual registration fee of $2,500 per year.

3. All active facilities shall be classified in one of the quintile ranges in accordance with part 1 of this subparagraph. If a facility falls into two different quintile ranges, based on the amounts of dense and light solvent it uses, the higher fee will be paid.

4. Beginning with the calendar year 2011, the initial registration fee for all new drycleaning facilities, regardless of solvent type used, shall be $500.

5. The proceeds from all facility registrations shall be deposited into the Drycleaner Environmental Response Fund. Should the total collections from annual registration fees and solvent surcharges fail to reach or exceed $1,250,000.00 during any fiscal year, the per facility annual registration fee and solvent surcharges for the subsequent year for drycleaning facilities may be increased, subject to Board approval, by an amount sufficient to reach the threshold of $1,250,000.00.

(d) Each wholesale distributor shall pay an annual registration fee equal to the highest fee paid by a registered drycleaning facility or $5,500, whichever is higher.

(e) The Department shall attempt to notify and submit a registration fee payment form to each facility at least thirty (30) days before the payment of the registration fee is due. Any failure of the Department to do so shall not be justification to withhold payment of any registration fee and shall not affect the generally applicable due date for fee payment.

(f) Beginning with the calendar year 2001 registration, the registration fee shall be due on October 31st of the preceding year. The registrant shall submit the appropriate registration form and pay the registration fee on or before the due date.

(g) A registration form and other required documents shall be submitted to the program at least two weeks prior to commencing operations. A revised registration form shall be submitted within 30 days of a change in information which requires filing a revised registration. A change in information which requires filing a revised registration form includes the following: a change in ownership, operation or management of the facility or real property, or a change in the facility name previously reported to the DCERP. The form shall be submitted by one of the persons described in subparagraphs (2)(a), (b), or (d) of this rule.

(h) An impacted third party that petitions for entry into the program must ensure that all applicable registration fees for the facility are paid. The registration fee for an impacted third party shall be the same as the facility's would be, provided the facility is currently operating. If a drycleaning facility is not currently operating at the site, the impacted third party would pay the abandoned drycleaning facility registration fee, subject to the cure provisions subparagraph (4)(b) of Rule 1200-01-17-.05. Nothing herein shall otherwise affect any penalties or other liabilities incurred pursuant to the Act or these rules, except that there shall be no double recovery of registration fees by the Department.

(4) Issuance of Registration Certificates

(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.

(b) Beginning with the calendar year 2001, the certificates will be effective for one year, from January 1st through December 31st, unless otherwise terminated under these rules.

(c) It shall be unlawful to sell or transfer drycleaning solvent to any person owning or operating a drycleaning facility unless the operator of the drycleaning facility has conspicuously posted at the facility a valid certificate evidencing registration of the drycleaning facility. Violators of this provision shall be subject to the penalties identified in T.C.A. §68-217-106(d).

(5) Revocation / Non-renewal of Registration

(a) By a Commissioner's Order the Department may revoke a facility's Certificate of Registration or withhold re-issuance, due to violations of the Act or any regulations promulgated pursuant to the Act that significantly cause or contribute to a release, or a failure to contain a release.

(b) The revocation or non-renewal of a registration will state the grounds for revocation, its effective date, and a requirement to surrender the Certificate of Registration.

(c) A person whose registration is revoked shall not be entitled to any refund on the paid registration fee.

(d) After the revocation of a facility's registration, the operator shall surrender the Certificate of Registration, and the Department may notify solvent suppliers for said facility of its unregistered status.

(e) Following revocation or non-renewal of a registration, a person may reapply for registration by submitting a complete and truthful registration form, paying all outstanding fees, surcharges, and penalties, submitting a new registration fee, and meeting any other requirements for registration.

(f) Any person against whom such an order is issued may appeal said order by filing a written petition in accordance with Rule 1200-01-17-.10.

(6) Solvent Surcharge Fees

(a) The surcharge fee is applicable for all drycleaning solvent purchased or transferred after September 30, 1995. Beginning January 1, 2011, the surcharge fee is fifteen dollars ($15.00) for each gallon of dense non-aqueous solvent or product and one dollar and fifty cents ($1.50) for each gallon of light non-aqueous solvent or product obtained by a drycleaning facility. There will be no solvent surcharge fee on CO2.

(b) The surcharge fee shall be collected by the solvent supplier and forwarded with forms (provided by the Department) to the Department on a quarterly basis for the previous calendar quarter. Each active drycleaning facility shall submit (on forms provided by the Department) quarterly reports of solvent purchases/receipt. The supplier's quarterly solvent sales reports and fees along with solvent reports submitted by each active drycleaning facility, will be due by the end of the month following the reporting quarter.

Solvent Sales/Purchase Period	Reporting Deadline
January - March	April 30th
April - June	July 31st
July -September	October 31st
October - December	January 31st

All proceeds from the collection of solvent surcharges shall be deposited into the Fund.

(c) The operator of a drycleaning facility shall purchase solvent from a seller that collects surcharge fees. Where a seller fails to collect the surcharge fee on a sale of solvent, the drycleaner shall bring to the attention of said seller its obligation pursuant to the Act to collect said fees. If the seller still refuses to collect and remit said fees to the Department, then the drycleaner shall report such facts to the Department within 72 hours and, if the sale is consummated, shall remit the surcharge fee directly to the Department within 30 days of the sale. Failure of the drycleaner to follow this procedure shall subject it to the penalties prescribed in section 108 of the Act for failure to pay a surcharge fee. Nothing herein shall otherwise affect any penalties or other liabilities incurred by a seller pursuant to the Act or these rules by failing to collect or remit surcharge fees, except that there shall be no double recovery of surcharge fees by the Department.

(d) A sale or transfer of solvent between drycleaners shall require that the seller collect the surcharge for remittance to the Department, if a surcharge has not already been collected on said solvent as part of a prior transaction, and is subject to the reporting requirements of subparagraph (b) of this paragraph.

(e) Fiduciary Responsibility: Every person responsible for collecting or holding surcharges under the Act has the obligation to hold said amounts in trust for the Fund until said surcharges are paid to

the Fund according to the Act and the regulations promulgated thereunder. Said person shall defend and protect, at his own expense, said surcharges from all losses and expenses of whatever nature, including but not limited to those occasioned by suits, levies, garnishments, and all other actions, losses, and expenses of whatever description, including all banking fees and charges or similar expenses. Said person shall promptly notify the Department of any action or circumstance which causes or threatens the collected surcharges with any loss or diminishment, including the person's insolvency or filing for protection under Federal bankruptcy law. All surcharges are the property of the Fund, and the person has no equitable right or claim to said surcharges. Any use of the surcharges or failure to defend said surcharges from loss or diminishment shall be deemed a violation of the trust relationship and these rules. Said person shall be liable to the Fund for all losses or diminishment of surcharges, including failure to collect. Surcharges should be deposited in a separate account used only for the purposes of this trust, or in the alternative, said surcharges should be clearly identified as trust property in the records and accounts of the person collecting the surcharge.

(7) Failure to Pay the Annual Registration or the Solvent Surcharge Fees

(a) Failure or refusal to pay a lawfully levied registration fee or solvent surcharge fee or any part of that registration fee or solvent surcharge will subject the person responsible for such payment to the provisions of T.C.A. § 68-217-108, and result in the denial of Fund access and the inability to receive Fund reimbursement.

(b) The Department shall not issue a Certificate of Registration to an owner or operator who has any facility for which fees, surcharges or penalties lawfully levied by the Department under these rules have not been paid.

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

1200-01-17-.04 Best Management Practices.

(1) Purpose - Implementation of Best Management Practices (BMPs) is designed to prevent possible future releases of drycleaning solvents into the environment.

(2) Applicability - The following requirements apply to all drycleaning facilities and in-state wholesale distribution facilities.

(3) Best Management Practices (BMPs) for Drycleaning Facilities

All active drycleaning facilities shall comply with BMPs because they are critical for the prevention of drycleaning solvent releases.

(a) Compliance with Existing Regulations and Standards

Drycleaning facilities using perchloroethylene shall comply with MACT – 40 CFR 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities and its amendments. If a facility purchases more than 2,100 gallons of perchloroethylene during any period of 12 consecutive months, it shall become a major source and must meet additional requirements of 40 CFR 63, Subpart M.

(b) Waste Management

1. As much as practicable waste containing solvent shall be recycled. No person shall place, store, or dispose of drycleaning solvent or a material or waste containing drycleaning solvent in a location or manner where such substances, either by themselves or in combination with other substances, will cause or may cause a release of drycleaning solvent either in a concentrated or diluted form to soil, sediment, ground water or surface water. Activities which are not allowed include, but are not limited to, the following:

(i) No person shall dispose of or place filters, diatomaceous earth, sludges, condensate water, still bottoms or other waste material containing drycleaning solvent in a dumpster or other trash receptacle, on the ground, or in any location other than appropriate labeled storage containers for these materials.

(ii) No person shall dispose of or place filters, diatomaceous earth, sludges, condensate water, separator water, still bottoms or other waste material containing drycleaning solvent in a sanitary sewer, storm sewer, septic tank, or any other underground structure which may result in a release.

(iii) No person shall dispose of or place filters, diatomaceous earth, sludges, condensate water, still bottoms or other waste material containing drycleaning solvent in a location or manner such that drycleaning solvent or a waste containing drycleaning solvent is released or may be released to the soil, sediment, ground water, or surface water.

(iv) No person shall pump or transport drycleaning solvent or waste containing drycleaning solvent through underground pipes or lines which are not readily visible. Pipes or lines transporting solvent shall be placed in a trench sealed with a material impervious to PCE or the appropriate solvent(s) in use at the facility.

(v) No person shall store a drycleaning solvent or waste containing a drycleaning solvent in an underground storage tank without documenting that the tank construction material is appropriate for the solvent material being stored. Underground storage tanks shall undergo upgrading and release detection as required for petroleum storage tanks in Chapter 0400-18-01, except deferrals listed in Rule 0400-18-01-.01(1)(b) shall not apply.

2. Any waste containing or derived from dense non-aqueous drycleaning solvent shall be handled as follows, regardless of the drycleaning facility's amount of solvent consumption or waste generation. A hazardous waste transporter permitted in accordance with Rule 0400-12-01-.04 shall transport the material to an authorized Treatment, Storage or Disposal Facility (TSDF) or other location approved by the Tennessee Division of Solid Waste Management (TDSWM) for such wastes. A copy of all hazardous waste and hazardous material shipping manifests shall be maintained at the drycleaning facility or a designated alternate site for inspection by the Department upon request. These records shall be maintained for a minimum period of five years.

3. Any waste containing or derived from light non-aqueous drycleaning solvent shall be placed in a sealed container, removed from the facility, and disposed of at an appropriate disposal facility regardless of the amount of the drycleaning facility's solvent consumption or waste generation. A record of the date, quantity of waste removed and the disposal location shall be maintained at the drycleaning facility or a designated alternate site for inspection by the Department upon request. These records shall be maintained for a minimum of five years.

4. If a drycleaning facility is to be closed or remain out of operation as a drycleaning facility for 90 days or more, solvent and solvent containing materials are to be properly removed from the facility.

(c) Materials Storage

1. Solvent and solvent-containing materials shall be labeled and stored in containers that are in good condition with tightly fitting lids so as to minimize the possibility of a release. Containers should be located in a non high-traffic area of the facility and in an area that is not easily accessible to the general public.

2. Material Safety Data Sheets for the drycleaning solvents that may be used at the facility shall be kept at the facility and available to the Department upon request.

(d) Management of Releases of Drycleaning Solvents

1. All drycleaning facilities shall use release prevention methods. Facilities shall ensure that any release of drycleaning solvent is immediately contained and recovered, in order to abate to the greatest extent reasonably possible, further consequences to human health and the environment.

2. Notification Requirements

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 PEP shall take such action within twenty-four (24) hours after discovery of the danger and shall notify the Department of said actions.

(e) Certification

Effective October 15, 2007, each drycleaning facility shall be staffed by at least one person who is a Certified Environmental Drycleaner (CED) as certified by the International Fabricare Institute, or has a certification deemed equivalent by the Board to meet this requirement. In the event of termination of employment or loss of certification by the CED, the facility has six months to replace the CED.

(f) Containment Systems

1. Dikes or other containment systems shall be installed under and around each drycleaning unit, solvent storage area and liquid waste storage areas.

2. The system for each solvent storage and liquid waste storage area should be capable of containing a leak, spill or release of drycleaning solvent up to a quantity equal to 110% of the total amount of solvent that may be used or stored in the containment area.

3. The system for each drycleaning unit should be capable of containing a leak, spill or release of drycleaning solvent up to a quantity equal to 110% of the total amount of solvent that may be stored in the largest tank within the containment area.

4. To the maximum extent feasible, the sealants and other materials to be used in the construction of containment systems should not allow the transmission of drycleaning solvent.

(g) Elimination of Potential Release Pathways - Flooring Integrity

To prevent the possible migration of solvents into soil, ground water or other media all cracked flooring, floor drains, or other structural conditions or defects that might act as a release pathway for solvents shall be sealed.

(h) Solvent Delivery Systems

Drycleaning solvent shall be delivered to drycleaning facilities in such a manner as to minimize the possibility of spills and releases of solvent during transfer of the material. No pouring of drycleaning solvents from open buckets or other similar methods will be allowed. Delivery of drycleaning solvents shall be adequately monitored to prevent overfills and spills. Beginning October 15, 2000, dense non-aqueous solvents or products delivered to drycleaning facilities shall be via closed, direct-coupled delivery systems.

(4) BMPs for In-State Wholesale Distribution Facilities

All in-state wholesale distribution facilities shall comply with BMPs because they are critical for the

prevention of drycleaning solvent releases.

(a) Spill Contingency Plan

In-state wholesale distribution facilities shall have a written Spill Contingency Plan at the facility and readily available for inspection. This document shall be signed and dated by a responsible party for the facility and shall be reviewed annually and updated as needed. A log of annual reviews denoting the date of the review and facility personnel involved shall be maintained and readily available for inspection. The Spill Contingency Plan must identify and describe:

1. The type and approximate quantities of drycleaning solvent located at the facility; including a to-scale facility layout map denoting the normal locations of solvents within the facility; designate the location of solvent transport vehicles;

2. Reasonably foreseeable potential releases from both normal operations and accidents at the facility;

3. The potential pathways of human exposure to drycleaning solvents resulting from potential releases;

4. The likely magnitude and nature of the human exposure resulting from potential releases and the human exposure resulting from a worst case scenario;

5. Drycleaning solvent handling methods, management and training practices, and any other programs in place at the facility or used during solvent transport operations that are designed to minimize or prevent solvent releases; and

6. The specific steps to be taken in the event of a fire, explosion, solvent spill or other similar potentially catastrophic event occurring at or near the facility; identify who is the primary coordinator for such events.

(b) Materials Storage and Handling

1. Solvent and solvent-containing materials shall be labeled and stored in containers that are in good condition with tightly fitting lids so as to minimize the possibility of a release. Containers should be located in an area that is not easily accessible to the general public.

2. Material Safety Data Sheets for the drycleaning solvents that may be stored or used at the facility shall be kept at the facility and available to the Department upon request. Monthly inspections of containers and storage areas shall be conducted and documented in a logbook. Logbooks shall be kept at the facility for a minimum of three years.

3. Drycleaning solvents shall be moved, handled, and transported with sufficient care to prevent damage to containers and releases to the environment.

(c) Management of Releases of Drycleaning Solvent

1. In-state wholesale distribution facilities shall have designated personnel to handle chemical spills and other similar circumstances and a designated primary coordinator for spills or other release situations that may occur at the facility or during transport of chemicals.

2. All in-state wholesale distribution facilities shall use release prevention methods. Facilities shall ensure that any release of drycleaning solvent is immediately contained and recovered, in order to abate to the greatest extent reasonably possible, further consequences to human health and the environment.

3. Notification Requirement

If a PEP has reason to believe that there is or may be an imminent and substantial threat to human health related to a release at a site, the PEP shall notify the Department of that fact as soon as possible but no later than 72 hours from the time of the discovery of the potential threat to human health.

(d) Containment Systems

1. Dikes or other containment systems shall be installed under and around each solvent storage area, liquid waste storage areas, and vehicle transport loading areas, or other facility features shall be in place that offer an equivalent level of protection and are designed to contain a release and prevent its migration into a sanitary sewer system or other utility pathways, onto other properties and surface areas, or into surface water, soil or groundwater.

2. Containment systems should be capable of containing a leak, spill or release of drycleaning solvent up to a quantity equal to 110% of the total amount of solvent that may be used, stored or loaded for transport in the containment area.

3. To the maximum extent feasible, sealants and other materials to be used in the construction of containment systems should not allow the transmission of drycleaning solvent.

(e) Elimination of Potential Release Pathways - Flooring Integrity

To prevent the possible migration of solvents into soil, ground water or other media all cracked flooring, floor drains, or other structural conditions or defects that might act as a release pathway for solvents shall be sealed.

(f) Solvent Delivery Systems

Drycleaning solvent shall be delivered to drycleaning facilities in such a manner as to minimize the possibility of spills and releases of solvent during transfer of the material. No pouring of drycleaning solvents from open buckets or other similar methods will be allowed. Delivery of drycleaning solvents shall be adequately monitored to prevent overfills and spills. Beginning October 15, 2000, dense non-aqueous solvents or products delivered to drycleaning facilities shall be via closed, direct-coupled delivery systems.

(5) BMPs for New and Reactivated Drycleaning Facilities and In-State Wholesale Distribution Facilities

Initial registration with the DCERP for active drycleaning facilities and in-state wholesale distribution facilities shall include a certification that all BMPs have been met. Any registered active drycleaning facility or in-state wholesale distribution facility that ceases operation for a period of twelve (12) consecutive months or longer, and then resumes operations must re-register with DCERP. Such re-registration is considered an initial registration. A facility inspection may be required for the purpose of ensuring compliance. The inspection shall be done according to a format and schedule determined by the Department.

(6) Requests For Extensions For BMP Implementation

(a) For good cause shown, except where there is an unreasonable threat to human health and the environment, the Department may grant an exemption or extend the deadline for a facility to comply with a BMP under this rule for a definite period of time. Good cause shall include, but not be limited to, the technical impracticability or prohibitive economic cost of BMP implementation as required under this rule.

(b) A request for an extension for BMP implementation shall be made in writing by a facility owner or operator. Requests for a BMP extension shall include: a detailed breakdown of the estimated BMP implementation costs, description of the work required to meet BMPs, an explanation as to

why compliance with BMPs is technically infeasible or why the expected costs are prohibitive, and a description of any type of BMPs or other technical upgrades that have been put in place since October 15, 1997. Additional information may also be requested by the Department as part of a BMP extension request.

(7) Failure to Adopt, Install or Maintain

(a) Where an operator of a drycleaning facility or in-state wholesale distribution facility has failed to adopt, install, or maintain a BMP as required under these rules and where such action or omission significantly causes or contributes to a release or a failure to contain said releases, said person shall not be eligible under the program for reimbursement of response costs or other benefits for said release. Such failure is considered willful noncompliance with these rules.

(b) If a substantial release is caused by gross negligence the Department or the Board may withdraw Fund eligibility, withhold a registration renewal, or terminate a facility's registration under the DCERP. Such gross negligence is also considered willful noncompliance with these rules.

(8) Investigatory Powers and Duties of Board

The Board delegates to the Commissioner the following powers of investigation:

(a) To enter a facility at reasonable times to inspect for the installation and maintenance of BMPs; and

(b) To inspect and copy at reasonable times any records, reports, test results, or other information relating to BMPs.

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

1200-01-17-.05 Qualifications and Procedures for Environmental Response Activities

(1) General

(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.

(b) Applicability.

Requirements of this rule apply to all applicants.

(c) Initial abatement and site stabilization costs.

Nothing in this rule shall be construed to prohibit the implementation of initial abatement and site stabilization measures upon the discovery of a release of drycleaning solvent. The costs of such measures may be Fund eligible regardless of compliance with this rule, in accordance with subparagraph (3)(c) of Rule 1200-01-17-.08.

(2) Application for Entry into the Program

(a) Persons wishing to apply for entry into the program and reimbursement of costs from the Fund for eligible expenses shall first submit an application for the Department's review and approval.

(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:

1. All applications shall contain verification that the subject facility is currently registered with the Department and that all applicable fees and surcharges are paid.

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.

3. Applications for active facilities or abandoned facilities (where the application is filed by the operator of the drycleaning facility) must either:

   (i) Include a certification by the operator that the operator has full legal authority to authorize the Department's access of the facility for all solvent impact assessments and response actions; or

   (ii) If the operator lacks such legal authority, the application must be filed jointly by the operator and the property owner. The applicant(s) shall designate the person who will receive Fund reimbursement under the program and the applicant's point of contact concerning the application.

4. Applications for abandoned facilities (filed by the impacted third parties) must be filed jointly by the impacted third party and the property owner if other than the impacted third party. The applicant must certify to the best of their knowledge that the facility meets all requirements for Fund eligibility. The applicants shall designate the person who will receive Fund reimbursement under the program and the applicant's point of contact concerning the application.

5. An impacted third party who is not the real property owner of the facility may file an application, without other signatories, if a previous application has been filed and accepted for the facility which grants ingress and egress. If no previous application has been filed and approved for the facility the impacted third party must file an application jointly with the real property owner.

6. Any other information requested by the Department.

(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.

(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 re-inspected by Department staff.

(4) Fund Eligibility Determination; Opportunity to Cure

(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:

1. Of the applicant to meet the definition of a current or prior owner or operator of an active or abandoned drycleaning facility, in-state wholesale distribution facility, or an impacted third party;

2. Of the facility to meet the definition of an abandoned or active drycleaning facility, or in-state wholesale distribution facility;

3. Of an abandoned or active drycleaning facility, or in-state wholesale distribution facility to register;

4. To pay all applicable registration fees, penalties and interest;

5. To pay all applicable surcharges and penalties;

6. To implement applicable BMPs at a drycleaning facility, or in-state wholesale distribution facility;

7. To conduct an appropriate facility inspection; or

8. To comply with other requirements of these rules and the Act.

(b) Opportunity to Cure

1. If an active facility has failed to register with the Department, the site will not be accepted into the program and will not be eligible for reimbursement of response costs. For purposes of this determination, failure to register shall mean the failure to meet and/or cure all material registration requirements of Rule 1200-01-17-.03 before the earlier of:

   (i) The filing of an application for entry into this program; or

   (ii) The discovery of the release which triggers the need for a response action.

2. If an abandoned facility has not been registered by an appropriate person with the Department, the site will not be accepted into the program and will not be eligible for reimbursement of response costs until payment of all registration fees, interest and penalties pursuant to T.C.A. § 68-217-106(b).

3. If the Department's records reveal that the appropriate fees, surcharges, interest and penalties have not been paid, the site will not be accepted into the program and will not be eligible for reimbursement of response costs other than the initial facility inspection until all money owed has been paid.

4. If the Department's records reveal that applicable 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. Except as provided in paragraph (7) of Rule 1200-01-17-.04, 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.

5. Real Property Owner as Impacted Third Party

   (i) Notwithstanding the fact that the facility inspection reveals that applicable BMPs have not been implemented, an impacted third party that has never operated the

facility and that is the real property owner of the drycleaning site will remain eligible for reimbursement of response costs beyond the initial facility inspection unless:

(I) Such party:

I. Had actual knowledge of the operator's failure to implement BMPs prior to the release, and

II. Failed to notify the Department of such operator's failure within sixty (60) days of such knowledge; or

(II) Such party failed to make a good faith effort to require the operator's compliance with applicable BMP requirements promulgated under the Act. For purposes of this rule, a good faith effort to require the operator's compliance with applicable BMPs means that the real property owner:

I. At the first reasonable opportunity, imposes an obligation under the lease or other contractual agreement on the operator to comply with applicable BMPs; and

II. Takes any other reasonable action to encourage implementation of BMPs by the operator.

(ii) Notwithstanding compliance with the provisions of subpart (i) of this part, where the facility inspection reveals that applicable BMPs have not been implemented, in order for an impacted third party who is the real property owner of the site to remain eligible for Fund reimbursement:

(I) The site must be an abandoned facility;

(II) The impacted third party must cause the implementation of appropriate BMPs; or

(III) The impacted third party must terminate the tenancy of the operator of the drycleaning facility.

(iii) Eligibility for Fund reimbursement of the real property owner of the site shall not relieve the facility operator from liability for any release under any other law or for third party claims.

6. An impacted third party that is not the owner of the real property on which the facility is located is not responsible for the failure to implement BMPs and need not cure such failure. However, upon application by an impacted third party who is not the owner of the real property on which the facility is located, the Department shall notify the operator of the facility and the real property owner of the impacted third party's application and provide them with the opportunity to enter the program within a specified time period, and to implement applicable BMPs in accordance with these rules. If neither the operator of the facility nor the real property owner enters the program and corrects the deficiencies, the Department may initiate activities to evaluate the site under Chapter 0400-15-01 Inactive Hazardous Substance Site Remedial Action Program. The Fund will be responsible to the Remedial Action Fund for eligible costs of the impacted third party's apportioned share of response costs, subject to the applicable deductible. Eligibility for Fund reimbursement of an impacted third party that is not the owner of the real property on which the facility is located shall not relieve the facility operator or the real property owner of the site from liability for any release under any other law or for third party claims, including without limitation liability for reimbursement of response costs paid out of the Remedial Action Fund.

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 thirty (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 thirty (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 Chapter 0400-15-01 Inactive Hazardous Substance Site Remedial Action Program.

(5) Prioritization Investigation

(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 PEP 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 forty five (45) days of the completion of any phase of additional activities.

(b) Once the prioritization investigation is completed and a report is submitted to the Department, the Department shall evaluate all pertinent information and make a determination for further investigation and remediation of any release of drycleaning solvent. At the Department's discretion, a prioritization investigation may also be performed by the Department.

(6) Prioritization for Investigation or Interim Action

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

1. Interim Action Needed.

2. Immediate Investigation Needed.

3. Non-time Critical Investigation Needed.

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

(c) At all stages within this program, the approval of additional work to be funded by the DCERP will be done with consideration for the relative threats to human health and the environment associated with each site. 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.

(7) Implementation of Interim Action or Solvent Impact Assessments

(a) Interim Action

1. The Department shall notify the applicant of the Department's determination of the need

for interim action within sixty (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 re-prioritized for investigation.

(b) Solvent Impact Assessments

1. The Department shall notify the applicant of the Department's determination of the need for solvent impact assessment within sixty (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 subparagraph (6)(g) of Rule 1200-01-17-.08 minor adjustments in the approved work plan, as required based on field or subsurface conditions, do not require approval by the Department.

(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.

(d) Investigation or Interim Action Report

An investigation or interim action report shall include a description of activities undertaken during the investigation or interim action, observations made, sampling results, any adjustments to the work plan, and other information required by the Department.

(8) Remedial Alternatives Study

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.

(9) Remediation Priority Ranking

(a) Two Fund Groups

1. Based on the results of a solvent impact assessment or interim action and other relevant factors, the Department shall rank approved sites for remediation in one of two site remediation fund groups. The first group will be for sites which use or have released dense non-aqueous solvents or products. The second group shall be for sites which use or have released light non-aqueous solvents or products. A facility or site which is contaminated by both solvent types shall be placed in a group based on which solvent release poses the greatest risk to human health and the environment.

2. The amount of remediation funds which shall be segregated for each remediation priority ranking group shall be proportional to the percentage of each group's total contribution to the Fund for the immediately preceding fiscal year. If Fund money is needed to address a site which requires or may require an immediate action to protect human health, but the appropriate remediation group does not have sufficient funds to undertake the necessary activities, then the Board may authorize money to be used from the other group to perform the action.

(b) Sites will be ranked for remediation within each of the following groups:

1. Immediate Remedial Action Needed.

2. Remedial Action Pending.

3. Monitoring Only.

4. No Remedial Action Required.

(c) The Department shall notify the PEP, 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.

(d) At all stages within this program the approval of additional work to be funded by the DCERP will be done with consideration for the relative threats to human health and the environment associated with each site.

(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.

(10) Implementation of Remediation

(a) Based on availability of funds, the site ranking, and the remediation required, the Department shall notify an 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.

(b) 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.

(c) 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.

(11) Completion Letter

After all required interim action, investigation, remediation, or other required activities are completed at the site, a completion letter shall be issued to the applicant by the Department. Following issuance of the completion 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.

(12) Non-Reimbursement Review

(a) The program may provide oversight of registered facilities requesting review, which will not be seeking Fund reimbursement. Prior to issuance of a Response Complete Letter the program will ensure that the investigative and remedial activities were comparable to sites participating in the program for reimbursement of environmental response activities and that to the extent practicable were consistent with program regulations. The requester shall submit a written request to the program for review/oversight and shall document or include the following: BMP compliance, the facility is current with all fees, surcharges, and penalties, the work has or will be performed by a Drycleaner Approved Contractor (DCAC), signed acknowledgment that costs expended will not be eligible for reimbursement from the Drycleaner Fund, and that all pertinent documents/reports have been submitted to the program.

(b) The program may provide oversight of unregistered facilities requesting reviews, which will not be seeking Fund reimbursement. The program may deny any request for a review that is not reasonable or cost effective. Prior to issuance of a Response Complete Letter the program will ensure that the investigative and remedial activities were comparable to sites participating in the program for reimbursement of environmental response activities and that to the extent practicable were consistent with program regulations. The requester shall submit a written request to the program for review/oversight and shall include an acknowledgement that costs expended will not be eligible for reimbursement from the Drycleaner Fund and shall submit all pertinent

documents/reports related to environmental activity at the site. In addition the requester shall pay a program oversight fee of $5,000.

(c) Notwithstanding the request for and provision of oversight under the program pursuant to either subparagraph (a) or (b) of this paragraph, any applicant may apply for entry of a facility in the program in accordance with this rule and proceed to comply with the requirements there under; provided, that any costs incurred under oversight pursuant to subparagraphs (a) or (b) of this paragraph shall not be reimbursable from the program Fund. The program oversight fee in accordance with subparagraph (b) of this paragraph 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.

1200-01-17-.06 Withdrawing an Applicant's Grant of Approval.

(1) The Department may withdraw any favorable determination concerning any application for entry into the program previously granted if it determines that the applicant is in willful noncompliance with the provisions of the Act or these rules without giving an opportunity to cure. Willful noncompliance includes, but is not limited to:

(a) An applicant's material misrepresentation of facts in its registration application or its petition for entry into the program; or

(b) The applicant's failure to timely adopt, install or maintain an applicable BMP where such action or omission significantly causes or contributes to a release or a failure to contain said release.

(c) An applicant's intentional misrepresentation of material environmental conditions concerning the applicant's site; an applicant's unreasonable delaying submittal of pertinent site data and information; an applicant's filing or reporting of false, misleading, or inaccurate material information with the Department; or any other such intentional actions taken by the applicant which significantly impedes the Department's ability to properly evaluate the site and/or determine appropriate response actions for that site.

(2) Order Withdrawing Grant of Approval

The withdrawal of an applicant's grant of approval shall be accomplished by the issuance of a Commissioner's Order pursuant to Rule 1200-01-17-.10. Said order shall include a statement of the facts constituting the alleged violations. The Commissioner's Order may also provide for the immediate suspension of reimbursement payments from the Fund and for the return of any Fund payments made to any person that was ineligible at the time of receipt of said funds. Known impacted third parties shall also be sent notice of the withdrawal of approval by the Department. Notice to impacted third parties shall be sufficient if written notice is provided to any lessor of real property, known to the Department, on which an active or abandoned drycleaning facility or in-state wholesale distribution facility is located, as well as any third party, known to the Department, who owns or leases property that is known or suspected by the Department to have been contaminated from the release in question by solvents or their degradation products. The order shall be delivered by personal service or sent by certified mail, return receipt requested.

(3) Appeal of Commissioner's Order

(a) Any person against whom such an order is issued may appeal said order to the Board by filing a written petition pursuant to Rule 1200-01-17-.10 of these regulations. The recipient of the order shall provide a copy of said appeal to known impacted third parties at the time of its filing and provide reasonable notice of the date set for a hearing of the petition. A suspension of Fund payments by the Department shall remain in effect pending any appeal of a Commissioner's Order.

(b) Should the recipient of the order and the Department agree to hear a contested petition at a time other than the time communicated to impacted third parties, then the known impacted third

parties shall be notified by the recipient of the order of the new hearing date at least five business days in advance of the hearing.

(c) Following the hearing of a contested petition, the Board shall determine whether the petitioner should be eligible for reimbursement of some or all of its expenses from the Fund. If the Board determines that only part of the petitioner's expenses should be reimbursable, the petitioner shall be liable for the release in question, save for those expenses identified as reimbursable by the Board, and shall not otherwise be eligible for program benefits.

(4) Except as provided in paragraph (5) of this rule, 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.

(5) The Department may, through an order issued pursuant to Rule 1200-01-17-.10, withdraw any favorable determination concerning any otherwise eligible party who:

(a) Contributes to or cooperates in a material misrepresentation in another eligible party's petition within its knowledge; or

(b) Fails to timely inform the Department or Board of a material misrepresentation in another eligible party's petition within its knowledge or acquiesces in such failure.

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

1200-01-17-.07 Reserved for Cleanup Goals / Cleanup Actions.

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

1200-01-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund.

(1) Fund Obligations

(a) The Commissioner shall obligate money from the Fund based on the following procedures:

1. Available monies in the Fund shall be obligated for response activities based on the priority ranking system and statutory limitations. For sites which have equivalent ranking status within a single group, funds will be obligated according to the chronological order in which the complete application for entry into the program was received.

2. Available monies in the Fund shall be specifically designated for response activities as such activities are approved and authorized for implementation by the Department.

(b) The Commissioner will make payments from the Fund when:

1. The applicant has petitioned the Board for entry into the program, has complied with all requirements for entry into the program, and has been accepted by the Board.

2. A reimbursement request is received, according to a schedule and format determined by the Department, for response costs associated with a release of drycleaning solvent for which the Department has authorized the work related to such response costs, subject to a determination by the Department that the costs are reasonable and/or consistent with the related work plan and cost proposal authorized by the Department.

(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 these rules. 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 these rules 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.

(d) All claims against the Fund are obligations of the Fund and not of the state, and any amounts to be paid under this rule are subject to the availability of sufficient monies in the Fund. The full faith and credit of the state shall not in any way be pledged or considered to be available to guarantee payment from such Fund.

(2) Scope of Fund Coverage

(a) The Fund will provide reimbursement for the reasonable cost of Department-authorized inspection, investigation and remediation, exclusive of interest, at sites accepted into the program. All costs consistent with cost proposals approved by the Department shall be considered reasonable costs.

(b) The following deductibles shall apply per site for active drycleaning facilities, abandoned drycleaning facilities and in-state wholesale distribution facilities that petition the DCERP Cleanup Program:

1. For petitions received prior to the effective date of this rule amendment, deductibles that apply are those in effect for the active drycleaning facilities, abandoned drycleaning facilities or in-state wholesale distribution facilities when the site entered the cleanup program.

2. For petitions received on or after July 1, 2011, the deductible shall be 10% per reimbursement with a maximum deductible of $50,000.

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

(3) Authorized Disbursements from the Fund

(a) Whenever the Commissioner determines a release has occurred at an eligible site, the Department shall, subject to the provisions of these rules including site prioritization, disburse monies available in the Fund to provide for reimbursement of the reasonable cost of:

1. DCERP authorized inspection, investigation, assessment and cleanup of sites contaminated by a release of drycleaning solvents, which may consist of clean-up of affected soils, groundwater, sediment, surface water, air or other environmental media using cost-effective alternatives that are technically feasible and reasonable, and that provide adequate protection of the public health, safety and welfare and minimize environmental damage.

2. The interim replacement of and permanent restoration of potable water supplies.

(b) Where the Commissioner has determined that an immediate response to an eligible site was necessary as a result of an imminent and substantial danger, with the response funded by the Hazardous Waste Remedial Action Fund, the costs of any such response actions may be reimbursed from the Fund, with the Board's approval.

(c) The costs for reasonable initial abatement and site stabilization activities are Fund eligible, up to $5,000 and subject to applicable deductibles, without submission and prior Department approval of a cost proposal. The costs must be directly associated with containing or addressing a release of solvent or material containing solvent. Normal operating practices, including but not limited to the proper disposal of solvent or material containing solvent, are not considered initial abatement or site stabilization activities.

(d) The costs for implementing an initial Facility Inspection required by the Department pursuant to paragraph (3) of Rule 1200-01-17-.05 are eligible for reimbursement, regardless of whether the Facility Inspection determines that the site is eligible or ineligible for further reimbursement.

(e) Costs incurred by the Department in the administration of the Act and these rules shall be charged to the Fund.

(f) The Fund shall be available to the Board and the Commissioner for expenditures for the purposes of providing for the investigation, identification, and for the reasonable and safe cleanup, including monitoring and maintenance of sites as provided in the Act.

(g) The Commissioner may enter into contracts and use the Fund for:

1. Hiring consultants and personnel;

2. Purchase, lease or rental of necessary equipment;

3. Conducting Interim Actions; and,

4. Other necessary expenses.

(4) Fund Ineligible Costs

(a) The Department may not authorize expenditure of monies from the Fund in an amount in excess of two hundred thousand dollars ($200,000) per fiscal year for releases from any individual facility, unless approved by the Board.

(b) The Department shall not authorize distribution of monies from the Fund that would result in a diminution of the Fund below a balance of one hundred thousand dollars ($100,000) unless an emergency exists at a facility that constitutes an imminent and substantial threat to human health or the environment.

(c) The Department shall not authorize distribution of Fund monies as specified in T.C.A. § 68-217-107(d).

(d) The Department shall not authorize distribution of Fund monies for response actions not undertaken in accordance with the regulations and guidance established by the Board.

(e) Monies held in the Fund shall not be used to reimburse costs incurred by owners or operators of facilities in conducting repairs, retro-fits, or the implementation of best management practices.

(f) The Fund shall not be obligated and shall not pay out any funds for any non-response type of damages, losses, costs, or expenses of any kind, including but not limited to stigma damages or diminution of value to real or personal property caused for any reason, including but not limited to a release of solvents or any activities approved under the Act or these rules; the restoration or repair (other than response actions) of any real and personal property for any reason, including but not limited to damages resulting from the release of solvents or any activities approved under the Act or these rules, or injury or death caused for any reason, including but not limited to a release of solvents or any activities approved under the Act or these rules. In addition, the Fund shall not be used for the landscaping of sites but shall only be used to restore those portions of the site affected by Fund approved activities to a safe condition. Finally, the Fund shall not be

obligated and shall not pay any penalties or fines, or other punitive expenses levied or incurred for any reason, including but not limited to a release of solvents or any activities approved under the Act or these rules.

(g) The Fund shall not be obligated and shall not pay out any funds for costs in which there was no prior written DCERP authorization or which were incurred prior to the effective date of these rules.

(h) Monies held in the Fund shall not be used to reimburse owners or operators of facilities conducting investigative or remedial activities under paragraph (12) of Rule 1200-01-17-.05.

(5) Maintaining Fund Eligibility

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

(a) The owner or operator of the facility shall remain in material compliance with the Act and program regulations, including but not limited to applicable BMPs.

(b) All required fees and surcharges shall be paid.

(c) Adequate records shall be maintained and made available to the Department upon request.

1. Drycleaning facilities are required to maintain the following records on site and reasonably available for inspection, or at a readily available alternative site:

(i) Documentation of solvent purchases or transfers;

(ii) Adequate employee payroll records which document and support the facilities FTEs;

(iii) Waste disposal manifests;

(iv) Documentation of equipment maintenance, repairs or retro-fits, including best management practices;

(v) Documentation of all site investigation and cleanup plans and expenses.

2. In-state wholesale distribution facilities are required to maintain the following records on site and reasonably available for inspection, or at a readily available alternative site:

(i) Documentation of solvent sales or transfers;

(ii) Waste disposal manifests;

(iii) Documentation of equipment maintenance, repairs or retro-fits, including best management practices;

(iv) Documentation of all site investigation and cleanup plans and expenses.

3. Unless the Department instructs otherwise, all records required to be maintained by this subparagraph shall be retained for three years after:

(i) The issuance of a certificate of completion of all necessary investigation and remedial work or further that no investigation and remediation is necessary with respect to a site; or

(ii) Ownership and all records pertaining thereto are transferred to a new owner.

(d) After being accepted into the DCERP, report to the DCERP any solvent releases which may impact the investigation or remediation of the site.

(6) 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:

(a) Applicants must perform initial response actions in accordance with Rule 1200-01-17-.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.

(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 potentially eligible party and the contractor. The Department must be provided a letter signed by both parties confirming that a contractual relationship exists for environmental response actions.

(c) Following completion of necessary site stabilization actions, subsequent inspections, investigative and corrective actions and their cost estimates must be approved by the Department in accordance with Rule 1200-01-17-.05 and performed by DCACs approved in accordance with the requirements of these rules. Response actions, other than those identified in subparagraph (a) of this paragraph, performed prior to acceptance of an associated cost proposal shall not be eligible for reimbursement, unless they were undertaken at the specific direction of the DCERP.

(d) Upon review of a cost proposal for Fund eligible activities the Department may:

1. Accept the cost proposal and authorize work to be initiated; or

2. Request a modification to or clarification of the cost proposal if projected costs are not determined to be reasonable.

(e) In addition to the requirements of subparagraph (c) of this paragraph, 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.

(f) Upon acceptance of a cost proposal by the Department, sufficient monies will be obligated from the Fund for completion of the particular phase of work along with authorization for the initiation of the proposed action. Payments from the Fund shall be subject to the availability of funds at the time of acceptance by the Department.

(g) The cost of completing any task in an approved work plan that exceeds the amount in the accepted cost proposal, may be denied by the Department unless:

1. An amended written cost proposal is submitted and approved before the original cost proposal is exceeded; or

2. Oral approval is given by the Department and within two working days, a written amended cost proposal consistent with such oral approval is submitted to the Department.

(h) The DCAC shall keep and preserve detailed records demonstrating compliance with approved investigative and response action plans, and all invoices and financial records associated with costs for which reimbursement will be requested. These records shall be maintained by the DCAC for at least three years after the response action has been completed for a site.

(7) Applications for Reimbursement

(a) Applications for reimbursement of response costs shall be submitted in a format established by the Department and shall, at a minimum, include an itemization of all labor charges (individual name, DCERP personnel category, date, rate and number of hours worked), analytical charges, equipment charges, and other categories which may be identified by the Department, or which the applicant may wish to provide.

(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 in-state 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.

(c) If a site has previously been the subject of an application for Fund eligibility that was denied, and where the reasons for denial have been properly cured or are subject to cure as set forth in these rules, the burden shall be on the applicant to demonstrate by substantial and material evidence in the application that an application does not include actions or expenses for releases that were the subject of applications that have been previously denied.

(d) Applications for payment for the implementation of response actions may be submitted sixty (60) days following initiation of work to implement the work plan and at sixty (60) day intervals thereafter until completion of the authorized activities. For work phases that will be completed within a relatively short time frame (i.e., three months or less), a reimbursement application should be submitted following the completion of the pre-approved work plan. Interim billings for phases of work that will not be completed in a short time frame shall include the expenses for a specified period of time (e.g., January-March) and shall, to the extent practicable, not have overlapping dates with prior or subsequent interim billings. The Department may request a status report to be submitted with each application for payment. Upon request, the Department may approve interim payments at more frequent intervals.

(e) All payments shall be subject to review for compliance with these rules by the Department. Should a site inspection or other information reveal a discrepancy between work performed and the work addressed by a payment application, the Department may deny payment or may require the Fund to be reimbursed for money already disbursed.

(f) Notwithstanding the provision of subparagraph (d) of this paragraph, in order to be eligible for payment from the Fund, an application for reimbursement must be received by the program within one year from the date expenses were incurred regardless of the duration of the work phase. For example: the personnel expenses of a geologist performing work activities, related to a specific site, on May 10th of the prior year would not be reimbursable by the program if the reimbursement application was received on or after May 11th of the current year.

(g) If the Fund reimburses a party for response costs under these rules for which the owner or operator of a facility has insurance coverage, the Fund is subrogated to the rights of the owner or operator with respect to that insurance coverage to the extent of the reimbursement. Acceptance of reimbursement under this subparagraph constitutes an assignment by the party with respect to any insurance coverage applicable to the costs that are reimbursed.

(8) Fund Payment Procedures

(a) Payments from the Fund will be made directly to the applicant in cases where the PEP 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 ninety (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 ninety (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 PEP of those costs denied reimbursement and the reasons for denial, and provide a forty-five (45) day period in which the PEP 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 thereunder.

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

1200-01-17-.09 Contractors.

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.

(1) A Drycleaner Approved Contractor ("DCAC") is a person or company responsible for conducting and overseeing the inspection, investigation, or remediation of a drycleaner environmental response program (DCERP) site. The Department shall establish and maintain a list of approved DCACs according to this rule. The DCAC list shall have three categories. There shall be one category for companies approved to perform facility inspections, a second category for companies approved to perform investigative work, and a third category for companies approved to perform remediation work. There may be one DCAC for facility inspection, another DCAC for site investigation, and one or more DCAC(s) for remediation of the site. There is nothing in these rules which prevents a company from applying to qualify for multiple DCAC categories. If a DCAC is approved for multiple categories, then the DCAC may perform services in any or all of the categories for which the DCAC is approved.

(2) A company will be approved to perform Fund eligible work upon satisfaction of the following:

(a) The company submits a written application to become a DCAC with the Department according to a format determined by the Department. The application shall include the following and other information requested by the Department:

1. Statement of organization, experience, and personnel including the following:

(i) Provide the organizational history of the company including, but not necessarily limited to, years in business; location of offices; form of business - sole proprietor, partnership, corporation; and a list of officers and principals of the company including their mailing addresses and telephone numbers;

(ii) Provide a copy of the organization's latest audited annual financial statement or other approved alternate proof of financial stability;

(iii) Provide a letter from an insurance company or companies approved to do business in the State of Tennessee which states that within thirty (30) days of notification that the company has been approved for addition to the DCAC list, the company can have in effect insurance as required in these rules with the Division of Remediation listed as a certificate holder on the policy(ies);

(iv) A licensed contractor that is applying to be in the remediation category shall attach a copy of the certificate documenting that the company has a valid Tennessee Contractor's License with a Specialty Classification to perform remediation of hazardous substance or hazardous waste sites or the equivalent with a monetary limitation of at least five hundred thousand dollars ($500,000);

(v) Prepare a detailed organizational chart showing only the employee names and titles that will perform work under the DCERP. Describe the project organization relating to staff that will perform work under the DCERP. State which staff will perform which services and include each person's job title. Note the location of all staff;

(vi) Attach a resume for each person listed on the organizational chart. Organize resumes in sections by office so that it is clear which personnel work from which office. Resumes shall, at a minimum, include the following information:

(I) Description of the education of the person including the school and year graduated, degree and major area of study, and specialized training including, but not limited to, health and safety training;

(II) Include the current position, title and applicable licenses and registrations which the person holds. If a person is listed on the organizational chart as an engineer that person must have a Tennessee Professional Engineer License number or an Engineer Intern number listed on the resume. Any geologist listed on the organizational chart must have a Tennessee Geologist Registration number on the resume;

(III) Provide a detailed employment history of the person including, but not necessarily limited to, the number of years and type of experience, description of job duties for each position held, and names of companies for which the individual has worked; and

(IV) List the sites on which the employee worked where the employee either performed facility inspections, investigation, or remediation activities related to contamination resulting from the release of dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs). Describe the activities and duties performed by the employee.

(vii) DCAC Experience Requirements

(I) If the company desires to be approved to perform facility inspections, provide descriptions of a minimum of three (3) different facility inspections or facility audits performed by current company staff during the past five (5) years at facilities which use or have on-site dense non-

aqueous solvents or products, excluding polychlorinated biphenyls (PCBs).

(II) If the company desires to be approved to perform investigations at sites in the DCERP, provide descriptions of a minimum of three (3) different investigations of contamination resulting from the release of dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs), in soil and/or ground water, which current company staff has performed in the past three years.

(III) If the company desires to be approved to perform remediation phase work at sites in the DCERP, provide descriptions of a minimum of three (3) different soil and/or ground water remediation projects involving contamination resulting from the release of dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs), which current company staff have performed in the past three (3) years. Remediation phase work includes, but is not limited to, preparing work plans and cost proposals for remedial phase work; designing, conducting, and evaluating remedial pilot tests and associated data findings; writing and amending Remedial Alternatives Study reports or other remediation phase documents that may be requested by the Department; designing, conducting, evaluating, and monitoring full-scale remediation site work; and implementing full-scale plans of remediation.

(IV) If a company desires to be approved for a combination of facility inspection, site investigation, and site remediation, it must submit a minimum of three (3) sites for each category for which the company is applying.

(V) In these descriptions, state the duties performed, type of facility inspected or contaminants investigated or remediated; results of the inspection, investigation or remediation and other pertinent information which would show the company's competency in inspection, investigation and/or remediation of contamination resulting from the release of dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs). Only include sites worked by personnel who will work on DCERP sites. Indicate the personnel who performed the inspection, investigation, or remediation and describe their job duties. Limit the discussion to two (2) typed pages per site per category;

(viii) Attach letters of recommendation for two (2) sites described above from clients describing the company's facility inspection or facility audit activities at the site and the clients' opinions of the quality of work performed by company's personnel if the company is applying to be approved for drycleaner inspection activities. Attach letters of recommendation for two (2) sites described above from clients describing the company's investigation activities at the site and the clients' opinions of the quality of work performed by company's personnel if the company is applying to be approved for investigation activities. Attach letters of recommendation for two (2) sites described above from clients describing the company's remediation activities at the site and the clients' opinions of the quality of work performed by company's personnel if the company is applying to be approved for remediation activities. If letters of recommendation are unavailable, other approved forms of verification can be substituted; and

(ix) If the company, its officers, its principals, or any of the employees referenced in subpart (i) or (vi) of this part have previously been removed from the DCAC list or have been the subject of any professional license revocation or suspension proceeding, or have been assessed a civil penalty for violation of any environmental law in Tennessee or comparable law in another jurisdiction,

describe the circumstances, including the reason(s) for such action and the response action(s) taken by the company to assure there will not be similar problems in the future;

2. A notarized statement, sworn by an executive officer or principal of the company including the following provisions:

(i) Neither the company nor any of the company's officers, principals, and employees have been convicted of, pled guilty to, or pled nolo contendere to violating any of the following or comparable environmental law in another jurisdiction:

(I) Environmental Vandalism (T.C.A. § 39-14-408).

(II) Illegal Disposal of Hazardous Waste (T.C.A. § 68-212-114).

(III) Solid Waste Dumping (T.C.A. § 68-211-114).

(IV) Air Pollution (T.C.A. § 69-201-112).

(V) Water Pollution (T.C.A. § 69-3-115).

(VI) Destruction of Aquatic Life or Habitat (T.C.A. § 70-4-206).

(VII) Polluting of Drinking Water Supply (T.C.A. § 68-221-713).

(VIII) Leaking Underground Petroleum Storage Tanks (T.C.A. § 68-215-120).

(IX) Knowingly gives or causes to be given any false information in any report, records, or documents (T.C.A. § 68-212-213).

(ii) Neither the company nor any of the company's principals, officers, and employees have been convicted of, pled guilty to, or pled nolo contendere to any of the following or a comparable law in another jurisdiction:

(I) Tampering with or fabricating evidence (T.C.A. § 39-16-503).

(II) Destruction of and tampering with governmental records (T.C.A. § 39-16-504).

(III) Destruction of valuable papers with the intent to defraud (T.C.A. § 39-14-130).

(IV) Forgery (T.C.A. § 39-14-114).

(V) Theft of services (T.C.A. § 39-14-104).

(VI) Theft of property (T.C.A. § 39-14-103).

(iii) The company understands that reimbursement from the Fund will be in accordance with the reasonable rate schedule as established by the Department; and

(iv) The company and its personnel have the licenses and registrations required by the State of Tennessee to perform the activities that said company proposes to perform.

(b) DCAC Registration Fee

1. A non-refundable registration fee of five hundred dollars ($500.00) shall be submitted with the application if the company is applying to be in one category of the DCAC list and a non-refundable fee of seven hundred fifty dollars ($750.00) shall be submitted if the company is applying to be in more than one category on the DCAC list.

2. A company with more than one office location may either submit one combined DCAC application for all office locations under a single registration fee, or the company may submit a separate DCAC application for each office location. Should one office location be disqualified under this program, any other offices that were included in a multiple-office DCAC application package under one registration fee would then be disqualified from the DCAC program.

(c) Companies which satisfactorily demonstrate to the Department's review committee that the company has: successfully performed significant past activities in facility inspection, investigation and/or remediation of contamination resulting from the release of dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs), through the site descriptions and letters of reference required in this rule, not violated environmental or other laws referenced in the sworn statement, paid the appropriate fee, and completed the other requirements listed above shall be included in the next published approved contractor list in the appropriate category(ies) following receipt by the Department of the required insurance certificate. For initial evaluation to become a DCAC, it shall be assumed by the Department that if a company has sufficient experience and qualifications to perform investigation and/or remediation activities at sites contaminated by dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs), then the company has sufficient qualifications to perform comparable activities at sites contaminated with Stoddard or other drycleaning solvents. If the company, its officers, its principals, or any of the employees referenced in subpart (a)1(i) or (vi) of this paragraph have previously been removed from the DCAC list or have been the subject of any professional license revocation or suspension, or have been assessed a civil penalty for violation of any environmental law in Tennessee or comparable law in another jurisdiction, the company shall also be required to satisfactorily demonstrate to the Department that the circumstances, including the reason(s) for such actions, have been corrected and will not reoccur. A company which is not approved as a DCAC may appeal the Department's determination to the Board; however the appeal must be filed within thirty (30) days of the Department mailing the certified letter notifying company of non-approval. The list of approved contractors shall be updated at least annually.

(d) Prior to October 31st of each year, each DCAC shall submit a renewal application including the following and other information requested by the Department on the renewal application:

1. List of personnel who will work on DCERP sites in the upcoming year and each person's job title, job descriptions, office location, and telephone number. For employees who have not had a resume submitted to the DCERP on a previous application and personnel who have either received or lost licenses or registrations, submit resumes as described under the initial application process.

2. A valid insurance certificate showing insurance required in these rules.

3. A non-refundable fee of two hundred dollars ($200.00) if the company is renewing as a DCAC in one category and a non refundable fee of three hundred fifty dollars ($350.00) if the company is renewing as a DCAC in two or more categories.

4. For a licensed contractor in the DCAC remediation category, also include documentation of a valid contractor's license to perform hazardous waste or hazardous substance site remediation or the equivalent with a monetary limitation of at least five hundred thousand dollars ($500,000).

(3) To remain on a list of approved DCACs:

(a) The DCAC shall abide by and comply with the Rules and Regulations of the Department of Finance and Administration, Chapter 0620-03-03, Personal Service, Professional Service and

Consultant Service Contracts and the terms of any contract entered into with the owner or operator of a facility, or impacted third party.

(b) The DCAC shall have written contract(s) with all contractors/subcontractors, and these contract(s) shall contain provisions that contractors/subcontractors will abide by and comply with the Rules and Regulations of the Department of Finance and Administration, Chapter 0620-03-03, Personal Service, Professional Service and Consultant Service Contracts. Contract(s) between the DCAC and contractors/subcontractors shall also contain provisions that all site workers working under authority of contractors/subcontractors shall have applicable health and safety training when required by the Tennessee Department of Labor or OSHA.

(c) Site workers employed by the DCAC or its subcontractors shall have the applicable health and safety training when required by the Tennessee Department of Labor or OSHA.

(d) The DCAC shall have a written contract with the owner or operator of the facility, or impacted third party at each Fund eligible site and the contract shall contain the following sentences conspicuously located on the first page of the contract:

(Company's Name) WILL/WILL NOT (mark one) USE THE DRYCLEANER ENVIRONMENTAL RESPONSE PROGRAM'S REASONABLE RATE SCHEDULE WHEN INVOICING (insert name of drycleaner owner, operator, or impacted third party) FOR THE EXPENSES INCURRED IN THE INVESTIGATION AND/OR CLEANUP OF THIS SITE;

ON BEHALF OF (Applicant's Name), (Company's Name) WILL PREPARE AND SUBMIT TIMELY REIMBURSEMENT APPLICATIONS IN ACCORDANCE WITH DCERP RULES INCLUDING RULE 1200-01-17-.08(7)(d) WHICH ALLOWS APPLICATIONS FOR PAYMENTS TO BE SUBMITTED SIXTY (60) DAYS FOLLOWING INITIATION OF WORK AND AT SIXTY (60) DAY INTERVALS THEREAFTER. IN ADDITION, RULE 1200-01-17-.08(7)(f) REQUIRES THAT IN ORDER TO BE ELIGIBLE FOR PAYMENT FROM THE FUND, AN APPLICATION FOR REIMBURSEMENT MUST BE RECEIVED, BY THE PROGRAM, WITHIN ONE (1) YEAR FROM THE DATE EXPENSES WERE INCURRED REGARDLESS OF THE DURATION OF THE WORK PHASE.

(e) The DCACs services will be performed in a manner consistent with the level of care and skill ordinarily exercised by members of their profession practicing in the State of Tennessee, under similar conditions, and at the time the services were rendered. The DCAC shall not knowingly, willfully, or recklessly cause the spread of contamination nor inhibit response action at the site.

(f) The DCAC will perform activities consistent with these rules and gather and maintain documentation and records necessary or required for supporting and filing claims with the DCERP Fund.

(g) The DCAC shall follow methods and procedures established by the DCERP for facility inspection, oversight of remediation, investigation and/or remediation of sites. The DCAC shall collect, gather, compile and maintain documentation requested by the Department.

(h) Unless otherwise specifically approved by the Department, the following shall apply. All work done by the DCAC shall have the prior approval of a Registered Professional Engineer or Professional Geologist who is licensed/registered with the Tennessee Department of Commerce and Insurance, and the work shall be performed as specified according to a plan approved by the Department. All plans and reports submitted to the Department shall be prepared and signed by the Registered Professional Engineer or Professional Geologist who prepares or is responsible for the plan or report. A Registered Professional Engineer or Professional Geologist shall make periodic site visits to verify whether or not the work performed is as specified by the Registered Professional Engineer or Professional Geologist, and according to a plan approved by the Department. The DCAC shall require a Registered Professional Engineer or Professional Geologist to submit a signed certification based on their personal observation and review of job site records stating whether or not the work is performed as directed by the Registered Professional Engineer or Professional Geologist, and whether the work is performed in

accordance with a plan approved by the Department. If the work is not performed according to the above specifications, the certification shall include a listing of how the work performed varies from the approved plan, and/or the authorization of the Registered Professional Engineer or Professional Geologist and the specific reason for each variation. The certification for the appropriate phase of work shall be submitted with the report describing that phase of the work including, but not necessarily limited to, investigation reports, remediation reports, and as-built drawings.

(i) The DCAC shall indemnify, and hold harmless the Department and the Board as well as officers, agents and employees from all claims, losses, or suits accruing or resulting to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts or omissions of DCAC relating to work as an approved contractor.

(j) The DCAC shall have all applicable license(s) and registration(s) required in the State of Tennessee and the local government where any work is performed;

(k) The DCAC shall maintain liability insurance coverage of the types and with the minimum amounts described in the Table below, or the equivalent. The DCAC shall provide certification, with the Division of Remediation listed as a certificate holder, to the Department of such coverage during the initial application process and yearly with the renewal application thereafter, or more frequently as necessary to keep the Department updated as to the DCACs current insurance coverage. A lapse of required insurance coverage is sufficient cause for removal of the company from DCAC status. Insurance shall be through an insurance company or companies approved to do business in the State of Tennessee and shall be in effect prior to the company becoming a DCAC. The insurance shall be written in a comprehensive form, satisfactory to the Department. The general liability and pollution insurance policies shall have the Department of Environment and Conservation and the State of Tennessee named as an additional insured on Contractor's policies and these policies shall have endorsements for a waiver of subrogation between the Contractor and the State.

1. Worker's Compensation:

   (i) State Statutory

   (ii) Employer's Liability $500,000

   (Without restriction as to whether covered by Workmen's Compensation Law)

2. Comprehensive General Liability (including Premises - Operations: Independent Contractor's Protective: Products and Completed Operations; Broad Form Property Damage; contractual):

   (i) Combined single limits for bodily injury and property damage:

   $1,000,000 Each Occurrence

   $2,000,000 Aggregate

   (ii) Products and Completed Operations to be maintained for one (1) year after final payment.

   (iii) Property Damage Liability insurance shall include coverage for perils of explosion, collapse, and underground hazard.

   (iv) Comprehensive General Liability shall apply per job.

3. For DCACs qualifying in the contractor categories for investigation activities and/or remediation activities, Pollution insurance for bodily injury and property damage:

$1,000,000 Each Occurrence

$2,000,000 Aggregate

For DCACs who will only conduct work in the facility inspection and/or remediation oversight contractor categories, the Pollution insurance requirement does not apply.

4. Personal injury:

$1,000,000 Each Occurrence

$2,000,000 Aggregate

5. Comprehensive Automobile Liability:

(i) Split limits of $500,000 (bodily injury per person)/1,000,000 (bodily injury per occurrence)/250,000 (property damage per occurrence); or

(ii) Combined single limits for bodily injury and property damage:

$1,000,000 Each Occurrence

6. The DCAC shall require that all subcontractors that perform site work shall be covered by insurance to the limits stated in these rules. Upon request, the DCAC shall secure a copy of said insurance policy for the Department.

(l) Once the DCAC receives a stop work notice, the company/DCAC shall file no additional plans, scopes of work, or cost proposals to the DCERP unless the stop work is removed by the Department or the Board.

(m) The DCAC shall submit timely annual registration renewal applications as required by subparagraph (2)(d) of this rule.

(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.

(4) The Department will provide notice that applications are to be requested by publication of a legal advertisement which will provide interested firms with the information necessary to request instructions for preparation and submittal of applications and supporting documentation. Applications received within forty-five (45) days of the date of the legal advertisement shall be reviewed prior to establishing a DCAC list. Applications and supporting documentation shall be independently evaluated by members of a review committee consisting of Department staff.

(a) Applications received after forty-five (45) days from the date of the legal advertisement shall not be reviewed until a DCAC list is established. These and subsequent applications shall be reviewed by the review committee and either approved for addition to the DCAC list or denied DCAC status within ninety (90) days of receipt of the completed application with appropriate supporting documentation, or establishment of the DCAC list, whichever is later.

(b) If the review committee does not approve a company for addition to the DCAC list, the decision of the review committee may be appealed to the Board.

(c) A company that previously submitted an application but was not approved as a DCAC may submit a subsequent application for review at such time as the company believes the requirements to be a DCAC are met, except a company shall not file applications for review to be a DCAC more than two (2) times in any calendar year.

(d) An updated DCAC list shall be published at least quarterly.

(5) A DCAC may be removed from the DCAC list if the DCAC, its principals, officers, or employees has done any of the following:

(a) Violates these rules;

(b) Charged the DCERP, the owner or operator of the facility, or impacted third party for work that was not performed;

(c) Fails to obtain or maintain necessary licenses;

(d) Fails to maintain the required insurance;

(e) Files an inaccurate drycleaner program Fund reimbursement application with errors in personnel titles, rates, activities performed, equipment used, material used or other items which cause or would cause an overpayment of Fund money to the DCAC;

(f) Misrepresentation of material environmental conditions concerning the site, unreasonable delaying submittal of pertinent site data and information, filing or reporting of false, misleading, or inaccurate material information with the Department, or any other such intentional actions which significantly impedes the Department's ability to properly evaluate the site and/or determine appropriate response actions for that site;

(g) Has been the subject of any professional license revocation or suspension, or has been assessed a civil penalty for violation of any environmental law in Tennessee or comparable law in another jurisdiction;

(h) Has been convicted of, pled guilty to, or pled nolo contendere to violating any of the following or comparable environmental law in another jurisdiction;

1. Environmental Vandalism (T.C.A. § 39-14-408);

2. Illegal Disposal of Hazardous Waste (T.C.A. § 68-212-114);

3. Solid Waste Dumping (T.C.A. § 68-211-114);

4. Air Pollution (T.C.A. § 69-201-112);

5. Water Pollution (T.C.A. § 69-3-115);

6. Destruction of Aquatic Life or Habitat (T.C.A. § 70-4-206);

7. Polluting of Drinking Water Supply (T.C.A. § 68-221-713);

8. Leaking Underground Petroleum Storage Tanks (T.C.A. § 68-215-120); or,

9. Knowingly gives or causes to be given any false information in any report, records, or documents (T.C.A. § 68-212-213);

(i) Has been convicted of, pled guilty to, or pled nolo contendere to violating any of the following or a comparable law in another jurisdiction;

1. Tampering with or fabricating evidence (T.C.A. § 39-16-503);

2. Destruction of and tampering with governmental records (T.C.A. § 39-16-504);

3. Destruction of valuable papers with intent to defraud (T.C.A. § 39-14-130);

4. Forgery (T.C.A. § 39-14-114);

5. Theft of services (T.C.A. § 39-14-104); or,

6. Theft of property (T.C.A. § 39-14-103);

(j) Is found to have engaged in the unauthorized practice of engineering, contracting, or geology under T.C.A. § 62-2-101, et seq., T.C.A. § 62-6-101, et seq., or T.C.A. § 62-36-101, et seq., or a comparable law in another jurisdiction by the appropriate regulatory agency or court;

(k) Performs a non-approved action which increases costs for the Fund, the drycleaner operator, or the impacted third party;

(l) Files three (3) plans which are rejected by the Department as deficient for similar reasons or fails to correct a plan based on comments from the DCERP without supplying acceptable explanation to DCERP;

(m) Files plan(s) or report(s) which do not bear the appropriate signature and Tennessee license/registration number of a Registered Professional Engineer or Professional Geologist;

(n) Deviates from a plan or scope of work as approved by the Department without the approval of the Department. This includes, but is not limited to, the following:

1. Failure to follow Quality Assurance and Quality Control approved in the plan;

2. Failure to follow the schedule for implementation approved in the plan; or

3. Failure to perform the activities listed or described in the plan.

(o) Fails to submit a complete renewal application by April 1 in the format required by the Department;

(p) Performs work at a DCERP site after a stop work or termination date established by the Department;

(q) Fails to perform activities required in these rules or allows activities required in these rules to not be performed;

(r) Fails to demonstrate the skills, techniques, procedures or knowledge necessary to perform DCAC work to DCERP requirements;

(s) Performs work in a category in which the DCAC is not approved; and

(t) Fails to submit timely reports or reimbursement requests to the Department.

(6) The process for removing a contractor from the DCAC list shall be as follows:

(a) The review process shall be initiated when a complaint is referred to the Department's review committee or the Department determines the company's activities as a DCAC should be evaluated.

(b) The review committee shall inform the company via certified mail that the company's activities as an approved contractor under the DCERP are to be reviewed. The company shall submit to the review committee a list of all sites where the company is performing DCERP Fund eligible work and the company shall cooperate with the review committee in any and all ways requested by the Department. The review committee shall perform its investigation and notify the company of the findings.

(c) The Department's review committee may request the company to appear at a meeting to show

cause why the Department should not remove the company from the DCAC list.

(d) The company may request a meeting with the review committee.

(e) The Department shall notify the company of the review committee's decision by sending a certified letter to the last known address of company on file with the DCERP. If the review committee determines that removal of the company from the DCAC list is warranted:

1. The certified letter sent by the Department to the company shall specify a date to terminate work on Fund eligible sites. After the stop work date no activities performed by the company on any DCERP site shall be Fund reimbursable unless the company appeals to the Board and the Board determines to allow the company to continue as a DCAC or the company reapplies to the Department and is accepted by the Department.

2. The company shall have thirty (30) days from the Department mailing the certified letter notifying the contractor of removal from the list of approved contractors to request an appeal to the Board. If the company does not appeal within the required time period the decision of the review committee shall be final. An appeal to the Board will stay the removal of the contractor from the DCAC list. An appeal to the Board shall not prohibit the Department from terminating or preventing the DCAC from working on DCERP Fund eligible sites during the appeal process and any work performed after the termination date and during said termination shall not be Fund eligible whether or not the company remains on the DCAC list following appeal.

3. The Department shall notify all sites which the company identified as Fund reimbursable sites of the stop work date and that the company's work after said date is not eligible for reimbursement from the DCERP Fund unless otherwise notified by the Department.

(f) If a contractor is removed from the list, other DCACs with common officers or principals shall be reviewed to determine whether to remove those DCACs with common officers or principals from the DCAC list.

(g) If a company is removed from the DCAC list, the company or a company with any of its principals or officers can not apply for a period of one (1) year from date of removal. If a company is removed as a result of conviction of, pled guilty to, or pled nolo contendere to violation of an environmental law listed in subparagraph (5)(h) of this rule or other violations listed in subparagraph (5)(i) of this rule, the company and any of its officers or principals who were convicted, pled guilty or pled nolo contendere shall not reapply to become a DCAC under the company name or any other entity.

(7) The DCAC list shall have a category which lists the number of times a company has been removed from the DCAC list. If a company, its principals, or its officers are removed from the list three (3) times, then the contractor, its principals, and its officers are not eligible to reapply for addition to the DCAC list.

(8) The initial application, renewal applications, plans and reports, and Fund reimbursement requests shall include the following certification:

"I certify under penalty of law, including but not limited to penalties for perjury, that the information contained in this (select one or another term as appropriate: application, form, report, study) and on any attachments, is true, accurate and complete to the best of my knowledge, information, and belief. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for intentional violations."

(9) The appearance of a company on the DCAC list shall in no way establish liability or responsibility on the part of the Department, the Fund, or the State of Tennessee in regards to the services provided by the company or circumstances which may occur as a result of such services. Furthermore, the appearance on the DCAC list is not an endorsement by the Department, Board, or State of Tennessee for the company to perform any services outside of the Drycleaner Environmental Response Program.

(10) A person or company working as a subcontractor under contract to a DCAC is not required to be classified as a DCAC. The subcontractor must maintain all applicable license(s) and/or registration(s) required in the state of Tennessee for work performed. The DCAC must ensure that subcontractors performing remediation activities have a valid Tennessee Contractor's License with a Specialty Classification to perform remediation of hazardous substance or hazardous waste sites or the equivalent with a monetary limitation of at least five hundred thousand dollars ($500,000).

(11) The DCAC must be the lead contractor and cannot be a subcontractor to a non-DCAC functioning as the primary contractor. For sites with multiple DCACs, the program shall consider the DCAC with the qualifications for that particular work phase to be the primary DCAC.

(12) A Drycleaner Approved Contractor (DCAC) may employ the environmental professional labor services of contractors or individuals who are not recognized by this program as a Drycleaner Approved Contractor. In such cases, however, the DCERP still requires that the qualifications and proposed DCERP billing titles of any staff that are used on a subcontracted basis be provided to the DCERP for review. The DCAC remains responsible for the work that is done by any staff under its employ, including subcontracted staff. The DCERP also requires that any subcontracted professional labor services be billed through the DCAC and not billed to the DCERP or to the applicant separately or directly by any subcontracted labor entity. These measures are in place to ensure maintenance of the DCAC as the primary responsible party for work approved by the DCERP and work conducted and invoiced to the DCERP.

(13) It is the responsibility of DCACs working in this program to seek written clarification from the DCERP concerning whether DCERP-issued approvals of work plans, project budgets, or other such items submitted by one DCAC to the DCERP are transferable with no modifications to another DCAC. Such situations can occur when there is a change in DCAC during the course of a project. The DCERP does not consider work plans, project budgets, and other similar items to automatically remain in force and transfer 'as-is' over to the new DCAC when a change in DCAC occurs.

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

1200-01-17-.10 Enforcement.

(1) Issuance of Order

(a) The Commissioner may enforce the provisions of the Act and these rules by issuing to the responsible person an order for payment of any appropriate fees, surcharges, and penalties authorized under the Act, and said order shall be complied with within the time limit specified. Such order shall be delivered by personal service or shall be sent by certified mail, return receipt requested.

(b) The Commissioner may enforce the provisions of the Act and these rules by issuing to the responsible person an order to revoke a facility's Certificate of Registration or withhold re-issuance subject to subparagraph (5)(a) of Rule 1200-01-17-.03. Such order shall be delivered by personal service or shall be sent by certified mail, return receipt requested.

(c) The Commissioner may enforce the provisions of the Act and these rules by issuing to the responsible person an order to withdraw any favorable determination concerning an application for entry into the program subject to Rule 1200-01-17-.06. Such order shall be delivered by personal service or shall be sent by certified mail, return receipt requested.

(2) Appeal of Order

Any person against whom an order is issued may secure a review of the reasonableness, propriety, or amount of such order by filing with the Commissioner a written petition setting forth the grounds and reasons for the objection and asking for a hearing before the Board. Any such order shall become final and not subject to review unless a petition is filed within thirty (30) days after its issuance. An additional three (3) days shall be permitted for filing a petition if an order is delivered by certified mail rather than personal service.

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

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Brenda Apple	X				
Ron A Belz	X				
Dennis B. George	X				
John Holt		X			
Paul Krivacka				X	
Surendra Kumar	X				
Gary W. Randles	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Drycleaners Environmental Response Board on 07/13/2010, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/24/10

Rulemaking Hearing(s) Conducted on: (add more dates). 05/04/10

Date: 7-13-2010

Signature:

Name of Officer: Surendra Kumar

Title of Officer: Chairman

WANDA POWERS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

My Commission Expires NOV. 7, 2012

Subscribed and sworn to before me on: 7/13/2010

Notary Public Signature: Wanda Powers

My commission expires on: 11/7/2012

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

9-24-10
Date

Department of State Use Only

Filed with the Department of State on: 9/27/10

Effective on: 12/26/10

Tre Hargett by [illegible] RDA

Tre Hargett
Secretary of State

RECEIVED
2010 SEP 27 PM 4: 05
SECRETARY OF STATE
PUBLICATIONS

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: Several commenters were concerned that the proposed fee increases were significant especially during a down economy. These commenters believed that many operators will not be able to pay the proposed fees and will be driven out of business. They added that the number of drycleaners is declining and they cannot provide adequate funding for the program and that the fees are a tax on the sins of the past. The state needs to contribute to the fund. A gross receipts tax which matches sales volume with fund contributions is the fairest approach.

Response: The Drycleaner Environmental Response Program (DCERP) has not had an increase in its solvent surcharges or registration fees since the inception of the Program in 1996. However, the costs to operate the Program and to conduct site investigations and remedial activities have all increased over the last fourteen years, to the point the Program is spending more than it takes in to achieve the same goals. Additionally, most of the sites have matured to the point where they are in active remediation and this activity costs substantially more than site investigation work. The rise in the drycleaning registration fees in 2009 was in response to the Boards fears about the viability of the Fund, which is laid out in the Statute.

Given the current economy and state budget it is highly unlikely that any state money would be appropriated to help fund the Program. The Program was setup to be self-funded by the collection of yearly registration fees and solvent surcharges. In the early years of the Program all operating costs were funded by the interest generated by the monies collected by the Fund. With the decline in revenues and the increased cost of operations, and the amount of funding spent on investigation and remediation work, the Fund has decreased to a level where the interest generated can no longer cover operation expenses. The costs to run the Program are legitimate expenses levied against the Fund.

Comment: Commenters wanted DCERP to stay within its budget and thinks the program needs more accountability. These commenters were of the opinion that the program needed to suspend cleanup activities for two to three years and allow the Fund to recover. Paying close to a million dollars every three years for state employees, the state should pick up these costs. It takes $400,000 a year to manage the Fund, why doesn't the Board downsize the staff until the Fund build back up. DCERP is important to drycleaners, but it's just as important that they don't put a strain on the very people they started out trying to protect.

Response: The DCERP was established to provide site investigation and remediation of drycleaning facilities contaminated by the use of drycleaning solvent. It acts as a type of "environmental liability" insurance to protect drycleaners from litigation once they have entered the Program. Its primary function is to protect the health of the people of Tennessee and the environment from the impacts of drycleaning solvent.

The suspending of DCERP cleanup activities is not a viable option because the health of the people of Tennessee and the environment is at risk from historical or newly spilled drycleaning solvent. Any investigation that determined that a public/private water source or any other sensitive receptor (daycare, restaurant, etc.) was in danger of being impacted or had been impacted by drycleaning solvent would need to be addressed as soon as possible to protect building occupants/water users. Additionally, the costs to administer the Program would still continue without any investigative or remedial activities taking place. In the meantime, the cost to perform this work would be increasing over the period work was suspended and would wind up costing the Fund more in the long run.

The DCERP staff has always tried to have a good working relationship with the drycleaning industry as a whole. The Program has gone out of its way, numerous times, to accelerate

investigation and cleanup activities to accommodate building or renovation schedules. The staff strives to keep the cost of investigation and remediation work as low as possible by reviewing every work plan and cost estimate submitted by contractors. We have only increased the amount of payment for contractor staff categories once in the last 14 years and this increase was well below what was requested by the contractors and well below what they could be paid doing work for the private sector. The Program has worked diligently with the Division of Solid Waste to develop a "Contained in" policy, which allows for disposal of perchloroethylene contaminated soil as special or non-hazardous waste based on the concentrations found. This has saved the Program hundreds of thousands of dollars. The Program has also worked with the environmental laboratories and gotten them to set a special price for the Program which has also saved precious Fund money. Additionally, the Program has also developed the Environmental Compliance Training program which is given at no cost to drycleaners. This fills the requirement for having a Certified Environmental Drycleaner on staff and hopefully will help with environmental compliance issues and reduce or eliminate Notice of Violations and fines.

There are currently only three personnel on the DCERP staff, two technicians (one ES5 and one ES3) and one administrative person (ASA3). To reduce the staff any further would significantly reduce services and increase the time needed to review work plans and reports and authorize additional activities, if needed.

Regulatory Flexibility Addendum

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

These amended rules will affect and benefit the active and abandoned drycleaners and wholesale solvent distribution facilities in the state. There are 345 active drycleaners, 41 abandoned drycleaners and two distribution facilities currently registered with the Drycleaner Environmental Response Program (DCERP).

(2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

Active drycleaners and abandoned drycleaners in the Response Program already pay yearly registration fees and solvent surcharges so no additional administrative costs should be required. Wholesale distributors, in-state and out-of-state, already collect solvent surcharge fees, so no additional administrative costs should be incurred.

(3) A statement of the probable effect on impacted small businesses and consumers.

Some of the drycleaners affected by these amended rules will have their yearly registration fees either raised or lowered based on their previous year's drycleaning solvent usage. All active drycleaners will pay increased solvent surcharge fees -- dense solvent surcharge fee increased from $10 to $15 per gallon and light solvent surcharge increased from $1 to $1.50 per gallon. Any active or abandoned drycleaning facility or wholesale in-state distributor that enters the DCERP – Environmental Response Activity (ERA), on or after July 1, 2011, will pay a deductable of 10% up to a maximum of $50,000.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

There are no alternative methods available for achieving the purpose and objectives of these rule amendments, which were designed to generate funding for the DCERP – ERA. The funding for the DCERP – ERA has declined in recent years due to a drop in revenue generated by yearly registration fees, solvent usage decline and increased costs of site investigation and remedial activities. Numerous scenarios were presented and discussed by the DCERP Board, a Task Force, made up of a State senator, a State representative, members of the drycleaning industry and associated business people, and the DCERP Staff. These Rule amendments represent the least burden on the industry, available through the regulations, while still maintaining the viability of the DCERP Fund.

(5) A comparison of the proposed rule with any federal or state counterparts.

No Federal counterpart exists. Numerous states have their own programs and all, except North Carolina, which gets a percentage of the state sales tax, have funding problems and have had to raise registration fees or limit participation in their programs.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Any exemptions, other than the ones already proposed in the amendments, will not generate enough funding to maintain the viability of the Fund as required by the Drycleaners Environmental Response Act (68-217-102).

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule to proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This rulemaking will have no impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rule amendments follow a lengthy process that the Drycleaner Environmental Response Program (DCERP) Board has followed. If first established a Task Force to review options to address the issues surrounding the DCERP Fund. The recommendation from the Task Force was for dramatic fee increases. The Board held several meetings, which were well attended, regarding proposals to increase fees. The rule ultimately passed by the Board was for a modest fee increase. Although these rule amendments make a few other changes the primary aspect is the fee increase. The most significant change to the Rule is the way yearly registration fees will be distributed. Currently there are three fee categories; $500, $1,000 or $1,500 per year based on the amount of solvent used. The proposed Rule change will increase the number of fee categories to five; $500, $1,000, $1,500, $2,000 and $2,500, based on solvent usage for perchloroethylene (dense solvent) users. The proposed solvent ranges are not fixed and will be recalculated every year. Light solvent usage and fees will be calculated in the same manner. Abandoned facility fees, those that are in the response program, will increase from $1,500.00 to a yearly registration fee of $2,500.00. Light solvent users, who have never used dense solvent at their facility, and certify, to their best knowledge and belief, that they haven't used dense solvent will pay an annual registration fee of $500.00.

Another change has the solvent surcharge for perchloroethylene increasing from $10.00 a gallon to $15.00 a gallon and light solvent increasing from $1.00 a gallon to $1.50 a gallon. There are no proposed changes for CO_2 uses.

The last change involves the deductibles paid for reimbursements submitted by applicants to the Environmental Response Program. Previously, the deductibles for facilities were based on their registration status. For applications received on or after July 1, 2011, the deductible shall be 10% of each reimbursement up to a maximum of $50,000.00.

All the other changes are administrative in nature, i.e., correcting spelling mistakes, numbering and grammar.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These rules are promulgated under the authority of T.C.A. §§ 68-217-101, et seq. The Act established the Drycleaner Environmental Response Program (DCERP), which is designed to facilitate and provide funds for the investigation and remediation of releases from eligible drycleaning and in-state wholesale distribution facilities.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

There were a number of affected drycleaners that were concerned about the increased costs to their industry and did not encourage the Board to approve these amendments. However, without the DCERP these drycleaners would have to fund their own environmental investigations and remediations as well as having to acquire expensive environmental liability insurance, which would be required by the owners of the property they are leasing or renting from, if the program did not exist.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Board is not aware of any.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two

percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

The Board projects an increase of $50,000 from the previous year. Collections of registration and solvent surcharge fees have declined from the program's initial collection in FY 96/97 from about $1.6 million to $840,000 FY 09/10. The Board expects to collect $890,000 this fiscal year with this rule amendment. The decline in revenue is contributed to improvements in the machinery used in the drycleaning industry and in the decline in the number of drycleaners in the state. The Board is required by regulation to consider increasing the fees if collections fall below $1.25 million per fiscal year.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Jim Gilbert
Division of Remediation
4th Floor L & C Annex
401 Church Street
Nashville, Tennessee 37243-1538

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Alan M. Leiserson
Legal Services Director, Office of General Counsel
Tennessee Department of Environment and Conservation

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L&C Tower
Nashville, Tennessee 37243-1548
Phone: 615-532-0131
Alan.Leiserson@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Board is not aware of any.

Department of State
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Nashville, TN 37243
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Rule ID(s): _____
File Date: _____
Effective Date: _____

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Environment and Conservation
Division:	Division of Remediation
Contact Person:	Jim Gilbert
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Zip:	37243-1538
Phone:	(615) 741-4998
Email:	Jim.Gilbert@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1200-01-17	Drycleaner Environmental Response Program
Rule Number	**Rule Title**
1200-01-17-.01	Drycleaner Environmental Response Program: General
1200-01-17-.02	Definitions
1200-01-17-.03	Registration, Fees and Surcharges, Certificate Issuance
1200-01-17-.04	Best Management Practices
1200-01-17-.05	Qualifications and Procedures for Environmental Response Activities
1200-01-17-.06	Withdrawing and Applicant's Grant of Approval
1200-01-17-.07	Reserved for Cleanup Goals / Cleanup Actions
1200-01-17-.08	Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund
1200-01-17-.09	Contractors
1200-01-17-.10	Enforcement

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

Chapter 1200-01-17
Drycleaner Environmental Response Program

Amendment

Chapter 1200-01-17 Drycleaner Environmental Response Program is amended by deleting it in its entirety and replacing it with the follow Chapter to read as follows:

Chapter 1200-01-17
Drycleaner Environmental Response Program

Table of Contents

1200-01-17-.01	Drycleaner Environmental Response Program: General	1200-01-17-.06	Withdrawing an Applicant's Grant of Approval
1200-01-17-.02	Definitions	1200-01-17-.07	Reserved for Cleanup Goals / Cleanup Actions
1200-01-17-.03	Registration, Fees and Surcharges, Certificate Issuance	1200-01-17-.08	Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund
1200-01-17-.04	Best Management Practices	1200-01-17-.09	Contractors
1200-01-17-.05	Qualifications and Procedures for Environmental Response Activities	1200-01-17-.10	Enforcement

1200-01-17-.01 Drycleaner Environmental Response Program: General.

(1) Purpose, Scope, and Applicability - This rule provides definitions of terms, general standards and procedures, and overview information applicable to these Rules.

(2) Rule Structure - These Rules are organized, numbered, and referenced according to the following outline form:

(1) Paragraph

(a) Subparagraph

1. Part

(i) Subpart

(I) Item

I. Subitem

A. Section

(A) Subsection.

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

1200-01-17-.02 Definitions.

Definitions - When used in ~~Rule~~ Chapter 1200-01-17, ~~et seq.,~~ the following terms have the meanings given below unless otherwise specified:

(1) "Abandoned Drycleaning Facility" means any real property premises or individual leasehold space on which a drycleaning facility formerly operated.

(2) "Act" means the "Drycleaner's Environmental Response Act", as amended, T.C.A. §68-217-101, et seq.

(3) "Applicant" means a ~~PEP~~ potentially eligible party who submits an application for entry and participation in the program for environmental responses activities.

(4) "Application" means the act of applying and/or the form or document upon which a request is made. For purposes of these ~~Rules~~ rules the terms application and petition are interchangeable.

(5) "Best Management Practices" or "BMP" means those procedures, methods, equipment selections, or other practices as described in Rule 1200-01-17-.04 , which when implemented, reduce or prevent the generation of wastes and/or releases of chemicals or other pollutants to the environment.

(6) "Chlorofluorocarbon", ~~and~~ or "CFC", means one of a group of chemical compounds composed only of carbon, chlorine, fluorine, and hydrogen.

(7) "Commissioner" means the ~~c~~Commissioner of the Department of ~~e~~Environment and ~~c~~Conservation, or the ~~c~~Commissioner's designee.

(8) "Dense Non-Aqueous Solvent or Product" means any chemical or mixture of chemicals, other than water-based solvent, that is used in the drycleaning of clothes and that does not float on water (in pure form has a specific gravity greater than 1.0).

(9) "Department" means the ~~d~~Department of ~~e~~Environment and ~~c~~Conservation.

(10) "Drycleaner Environmental Response Fund" refers to the fund established under T.C.A. §68-217- 101, et seq.

(11) "Drycleaner Environmental Response Program", ~~and~~ or "DCERP", means that program which is established under T.C.A. §68-217-101, et seq., and these ~~R~~rules.

(12) "Drycleaning Facility" means any commercial facility located in this state which is engaged in on-site drycleaning operations, other than:

(a) A coin-operated drycleaning operation;

(b) A facility located on a United States military base or owned by the United States, or any department or agency thereof;

(c) A commercial uniform service and/or linen supply facility; or

(d) A facility owned by the state or any agency or department thereof.

(13) "Drycleaner Approved Contractor", ~~and~~ or "DCAC", means a contractor who has met the qualification requirements as set forth in these ~~R~~rules and has been specifically designated by the Department to be an approved contractor in the drycleaner environmental response program.

(14) "Drycleaning Operations" means cleaning of apparel and household fabrics, using one or more drycleaning solvents, including, but not limited to, those businesses described in Standard Industrial Classification (SIC) Code No. 7216.

(15) "Drycleaning Solvent" or "Solvent" means any and all non-aqueous solvents or products used, or intended for use, in the cleaning of garments and other fabrics at a drycleaning facility and includes, but is not limited to, dense non-aqueous solvents such as chlorinated solvents like perchloroethylene (perc) also known as tetrachloroethylene, and light non-aqueous solvents such as petroleum-based solvents like Stoddard Solvent, and the products into which all such solvents or products degrade.

(16) "Facility" means an active or abandoned drycleaning facility or an in-state wholesale distribution facility.

(17) "Full-Time Equivalent Employee" means the total number of hours worked (per drycleaning facility) by all full-time and part-time employees, for the previous calendar year, excluding the owner/manager, divided by the number of weeks of operation, then divided by forty (40). This hereafter shall be known as "full-time equivalent (FTE)".

(18) "Fund" means the Drycleaner Environmental Response Fund as defined ~~earlier~~ in paragraph (10) of this ~~section~~ rule.

(19) "Hydrocarbon-Based Drycleaning Solvent" means a light non-aqueous solvent or product that is used as a primary cleaning agent in drycleaning operations and includes, but is not limited to, petroleum solvents such as Stoddard solvent.

(20) "Immediate Investigation Needed Site" means a site identified by the Department, based on information and analytical data provided in the prioritization investigation report, that exhibits conditions or contaminant concentrations such that a solvent impact assessment needs to be implemented in as timely a manner as possible in order to define the extent of probable soil or groundwater contamination.

(21) "Immediate Remedial Action Needed Site" means a site that has been identified by the Department as a result of a solvent impact assessment as posing a potential threat to human health or the environment. Given the level and nature of identified contaminant impacts these sites require an immediate remedial action.

(22) "Impacted Third Party" means a lessor of real property on which a drycleaning facility or an in-state wholesale distribution facility is located, a property owner whose real property is adversely environmentally impacted by a release from a drycleaning facility or in-state wholesale distribution facility, or their predecessors, successors or assigns, mortgagees, predecessors-in-title, and successors-in-title.

(23) "In-State Wholesale Distribution Facility" means a place of business located in this state of a wholesale distributor or any real property premises or individual leasehold space located in this state, occupied by an in-state wholesale distribution facility after June 13, 1995.

(24) "Interim Action Needed Site" means a site that has been classified by the Department as potentially posing a hazard of direct human contact or substantial environmental exposure to drycleaning solvent.

(25) "Light Non-Aqueous Solvent or Product" means any chemical or mixture of chemicals, other than water-based solvent, that is used in the drycleaning of clothes and that floats on water (in pure form has a specific gravity less than 1.0).

(26) "MACT" means maximum achievable control technology. It is a case by case determination of what constitutes a maximum achievable reduction of hazardous air pollutants considering the costs of achieving the emission reduction and any non-air health and environmental impacts and energy requirements. MACT may include but is not limited to: control equipment; work practice standards; emission standards; process modifications, or raw materials substitution and/or reformulation.

(27) "Monitoring Only Site" means a site that has been identified by the Department as a result of a solvent impact assessment that exhibits detectable contaminant concentrations in soil or groundwater, but does not require other remedial action under these ~~R~~rules. These sites will require periodic monitoring in order to ensure stabilization or a decrease in contaminant concentrations over time.

(28) "No Remedial Action Required Site" means a site that has been identified by the Department as a result of a solvent impact assessment that does not require any remedial action or further remedial action. These sites may have previously completed Department-required activities under one or more of the higher priority remediation categories.

(29) "Non-Hydrocarbon-Based Drycleaning Solvent" means a dense non-aqueous solvent or product that is used as a primary cleaning agent in drycleaning operations and includes, but is not limited to, halogenated chemical compounds such as perchloroethylene, trichloroethylene, and chlorofluorocarbons.

(30) "Non-Time Critical Investigation Site" means a site identified by the Department, based on information and analytical data provided in the prioritization investigation report, that does not exhibit conditions or contaminant concentrations to a degree that justifies an immediate solvent impact assessment, but will require an investigation in the future.

(31) "Operator" means any person or persons with the responsibility for operation of a drycleaning facility or in-state wholesale distribution facility or that has an ownership interest in the drycleaning operation or wholesale distributor.

(32) "Operation" with respect to a facility means maintaining or management.

(33) "Owner" with respect to a facility, means to own part or all of the real property of the facility.

(34) "Person" means an individual, proprietorship, partnership, trust, estate, corporation, limited liability company, association, Tennessee or other state agency, U. S. or other federal agency, municipality, political subdivision, or officers thereof.

(35) "Potentially Eligible Party", ~~and~~ or "PEP", means an active drycleaning facility owner or operator, or current or prior abandoned facility owner or operator, or in-state wholesale distribution facility owner or operator, or impacted third party who is potentially eligible to participate in the drycleaner environmental response program and Fund.

(36) "Release" means any spilling, pouring, overfilling, leaking, leaching, emitting, discharging, or escaping of drycleaning solvents from a drycleaning facility or an in-state wholesale distribution facility or its associated piping which impacts groundwater, surface water, surface or subsurface soils.

(37) "Remedial Action Pending Site" means a site that has been identified by the Department as a result of a solvent impact assessment that exhibits contaminant concentrations above cleanup levels. Given the level and nature of identified contaminant impacts these sites will require remedial actions, but not immediately.

(38) "Site" means the aerial extent of contamination and all suitable areas in very close proximity to the contamination necessary for the implementation of response actions

(39) "Transfer Machine" means a type of drycleaning machine, or the process, in which wet clothes are manually transferred from the washer unit to the dryer unit.

(40) "Wholesale Distributor" means a person or company whose primary business is selling drycleaning solvents and supplies to in-state or out-of-state drycleaning facilities. Primary business means where the percentage of the person's or company's gross receipts from the sale of drycleaning solvents and supplies to such drycleaning facilities equals or exceeds twenty percent (20%) of total gross receipts.

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

1200-01-17-.03 Registration, Fees and Surcharges, Certificate Issuance.

(1) Purpose - The purpose of this ~~section of the R~~rule is to establish a system and schedule for registration and collection of fees.

(2) Applicability - This rule applies to the following:

(a) All operators of drycleaning facilities conducting or intending to conduct drycleaning operations;

(b) All operators of in-state wholesale distribution facilities;

(c) Current or prior owners or operators of abandoned drycleaning facilities;

(d) All drycleaning solvent suppliers who sell or transfer solvent to Tennessee drycleaning facilities;

and

(e) Impacted third parties.

(3) Annual Registration Fees

(a) Duty to Register

1. Each year, every facility must be registered with the Department by one of the persons described in ~~Rule .03~~ subparagraphs (2)(a), (b), or (d) of this rule.

2. Persons registering a facility shall respond to all inquiries on the registration form completely and truthfully. On any registration form submitted after October 15, 1997, any material misrepresentation or omission regarding said registration may be considered willful noncompliance with these rules and may serve as sufficient basis for the Department's denial of an application for entry into the program, or for revocation or non-renewal of a registration issued in reliance on said representation, or for a denial or withdrawal of a grant for entry into the program.

(b) Current or prior owners or operators of abandoned drycleaning sites may register said sites in accordance with T.C.A. §68-217-106(b). The interest payable shall be in accordance with Article 11, Section 7 of the Constitution of the State of Tennessee.

~~(c) Beginning with calendar year 2004 registration, each drycleaning facility or abandoned drycleaning facility shall pay an annual per-site registration fee as follows:~~

~~Category 1 – Drycleaning facilities that purchased or obtained less than 75 gallons of dense non-aqueous solvents or products and/or less than 750 gallons of light non-aqueous solvents or products during the preceding fiscal year (3rd and 4th quarters of the prior calendar year and the 1st and 2nd quarters of the current calendar year) shall pay an annual registration fee of $500.00.~~

~~Category 2 – Drycleaning facilities that purchased or obtained at least 75 gallons but less than 150 gallons of dense non-aqueous solvents or products or at least 750 gallons but less than 1500 gallons of light non-aqueous solvents or products during the preceding fiscal year (3rd and 4th quarters of the prior calendar year and the 1st and 2nd quarters of the current calendar year) shall pay an annual registration fee of $1,000.00.~~

~~Category 3 – Drycleaning facilities that purchased or obtained at least 150 gallons of dense non-aqueous solvents or products or at least 1500 gallons of light non-aqueous solvents or products during the preceding fiscal year (3rd and 4th quarters of the prior calendar year and the 1st and 2nd quarters of the current calendar year), or~~

~~Drycleaning facilities that purchased or obtained at least 75 gallons of dense non-aqueous solvents or products and at least 750 gallons of light non-aqueous solvents or products during the preceding fiscal year (3rd and 4th quarters of the prior calendar year and the 1st and 2nd quarters of the current calendar year) shall pay an annual registration fee of $1,500.00.~~

~~The annual registration fee for abandoned drycleaning facilities is $1,500.00 per year.~~

~~All facilities must be classified in one of the above three categories. If a facility would otherwise fall into two different categories stated above based on the amounts of dense and light solvent it uses, it shall be assigned to the higher category.~~

~~After the effective date of this rule, the initial registration fee category for active facilities shall be based on the total solvent capacity of the machine(s). The proceeds from all facility registrations~~

~~shall be deposited into the Drycleaner Environmental Response Fund. Should the total collections from annual registration fees and solvent surcharges not exceed $1,250,000.00 during any fiscal year, the per site annual registration fee for the subsequent year shall be increased, subject to Board approval, by an amount sufficient to reach the threshold of $1,250,000.00 or a minimum of 10%; provided however, that the statutory maximum may not be exceeded.~~

(c) 1. Beginning in calendar year 2011, each active drycleaning facility shall pay an annual per-site registration fee as follows:

(i) Each year the number of active drycleaner facilities will be divided by the Department into quintiles (groups of 20%) by type of solvent (light or dense) and according to their solvent usage, from lowest to highest;

(ii) The Department shall determine the solvent usage of an active drycleaner facility by determining the quantity of solvent purchased including what was reported on the quarterly reports submitted in accordance with subparagraph (6)(b) of this rule for the fiscal year from when the annual per site registration fee is due;

(iii) The fee for each solvent group shall be $500, $1,000, $1,500 $2,000 and $2,500, respectively; and

(iv) The registration fees of subparts (i) through (iii) of this part shall be suspended for facilities that use light non-aqueous drycleaning solvent or product and shall be replaced with a registration fee of $500 per year provided DCERP records indicate that dense non-aqueous drycleaning solvent or product has never been used on the premises or by the facility and provided that the drycleaning operator will certify to the best of his or her knowledge and belief, that dense non-aqueous drycleaning solvent or product has never been used at the facility. Should dense non-aqueous drycleaning solvent or product subsequently be discovered to have been used by or at the facility, the operator shall pay the amount equal to the net amount of suspended registration fees that would have been assessed if the facility had reported the use of dense non-aqueous drycleaning solvent or product plus penalties and interest.

2. Abandoned facilities shall pay an annual registration fee of $2,500 per year.

3. All active facilities shall be classified in one of the quintile ranges in accordance with part 1 of this subparagraph. If a facility falls into two different quintile ranges, based on the amounts of dense and light solvent it uses, the higher fee will be paid.

4. Beginning with the calendar year 2011, the initial registration fee for all new drycleaning facilities, regardless of solvent type used, shall be $500.

5. The proceeds from all facility registrations shall be deposited into the Drycleaner Environmental Response Fund. Should the total collections from annual registration fees and solvent surcharges fail to reach or exceed $1,250,000.00 during any fiscal year, the per facility annual registration fee and solvent surcharges for the subsequent year for drycleaning facilities may be increased, subject to Board approval, by an amount sufficient to reach the threshold of $1,250,000.00.

(d) Each wholesale distributor shall pay an annual registration fee ~~of~~ equal to the highest fee paid by a registered drycleaning facility or $5,500 ~~per in-state wholesale distribution facility, regardless of the number of FTEs~~, whichever is higher.

(e) The Department shall attempt to notify and submit a registration fee payment form to each facility at least thirty (30) days before the payment of the registration fee is due. Any failure of the Department to do so shall not be justification to withhold payment of any registration fee and shall not affect the generally applicable due date for fee payment.

(f) Beginning with the calendar year 2001 registration, the registration fee shall be due on October 31st of the preceding year. The registrant shall submit the appropriate registration form and pay the registration fee on or before the due date.

(g) A registration form and other required documents shall be submitted to the program at least two weeks prior to commencing operations. A revised registration form shall be submitted within 30 days of a change in information which requires filing a revised registration. A change in information which requires filing a revised registration form includes the following: a change in ownership, operation or management of the facility or real property, or a change in the facility name previously reported to the DCERP. The form shall be submitted by one of the persons described in ~~Rule .03~~ subparagraphs (2)(a), (b), or (d) of this rule.

(h) An impacted third party that petitions for entry into the program must ensure that all applicable registration fees for the facility are paid. The registration fee for an impacted third party shall be the same as the facility's would be, provided the facility is currently operating. If a drycleaning facility is not currently operating at the site, the impacted third party would pay the abandoned drycleaning facility registration fee, subject to the cure provisions ~~as outlined in Section .05~~ subparagraph (4)(b) of ~~these Rules~~ Rule 1200-01-17-.05. Nothing herein shall otherwise affect any penalties or other liabilities incurred pursuant to the Act or these rules, except that there shall be no double recovery of registration fees by the Department.

(4) Issuance of Registration Certificates

(a) Certificates of Registration for each facility will be issued to the person who demonstrates substantial compliance, as determined by the ~~d~~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.

(b) Beginning with the calendar year 2001, the certificates will be effective for one year, from January 1st through December 31st, unless otherwise terminated under these rules.

(c) It shall be unlawful to sell or transfer drycleaning solvent to any person owning or operating a drycleaning facility unless the operator of the drycleaning facility has conspicuously posted at the facility a valid certificate evidencing registration of the drycleaning facility. Violators of this provision shall be subject to the penalties identified in T.C.A. §68-217-106(d).

(5) Revocation / Non-renewal of Registration

(a) By a Commissioner's Order the Department may revoke a facility's Certificate of Registration or withhold re-issuance, due to violations of the Act or any regulations promulgated pursuant to the Act that significantly cause or contribute to a release, or a failure to contain a release.

(b) The revocation or non-renewal of a registration will state the grounds for revocation, its effective date, and a requirement to surrender the Certificate of Registration.

(c) A person whose registration is revoked shall not be entitled to any refund on the paid registration fee.

(d) After the revocation of a facility's registration, the operator shall surrender the Certificate of Registration, and the Department may notify solvent suppliers for said facility of its unregistered status.

(e) Following revocation or non-renewal of a registration, a person may reapply for registration by submitting a complete and truthful registration form, paying all outstanding fees, surcharges, and penalties, submitting a new registration fee, and meeting any other requirements for registration.

(f) Any person against whom such an order is issued may appeal said order by filing a written

petition ~~pursuant to~~ in accordance with Rule 1200-01-17-.10.

(6) Solvent Surcharge Fees

(a) The surcharge fee is applicable for all drycleaning solvent purchased or transferred after September 30, 1995. Beginning January 1, 2011, ~~T~~the surcharge fee is ~~ten~~ fifteen dollars ~~($10.00)~~ ($15.00) for each gallon of dense non-aqueous solvent or product and one dollar and fifty cents ~~($1.00)~~ ($1.50) for each gallon of light non-aqueous solvent or product obtained by a drycleaning facility. There will be no solvent surcharge fee on CO2.

(b) The surcharge fee shall be collected by the solvent supplier and forwarded with forms (provided by the Department) to the Department on a quarterly basis for the previous calendar quarter. Each active drycleaning facility shall submit (on forms provided by the Department) quarterly reports of solvent purchases/receipt. The supplier's quarterly solvent sales reports and fees along with solvent reports submitted by each active drycleaning facility, will be due by the end of the month following the reporting quarter.

Solvent Sales/Purchase Period	Reporting Deadline
January - March	April 30th
April - June	July 31st
July -September	October 31st
October - December	January 31st

All proceeds from the collection of solvent surcharges shall be deposited into the Fund.

(c) The operator of a drycleaning facility shall purchase solvent from a seller that collects surcharge fees. Where a seller fails to collect the surcharge fee on a sale of solvent, the drycleaner shall bring to the attention of said seller its obligation pursuant to the Act to collect said fees. If the seller still refuses to collect and remit said fees to the Department, then the drycleaner shall report such facts to the Department within 72 hours and, if the sale is consummated, shall remit the surcharge fee directly to the Department within 30 days of the sale. Failure of the drycleaner to follow this procedure shall subject it to the penalties prescribed in section 108 of the Act for failure to pay a surcharge fee. Nothing herein shall otherwise affect any penalties or other liabilities incurred by a seller pursuant to the Act or these rules by failing to collect or remit surcharge fees, except that there shall be no double recovery of surcharge fees by the Department.

(d) A sale or transfer of solvent between drycleaners shall require that the seller collect the surcharge for remittance to the Department, if a surcharge has not already been collected on said solvent as part of a prior transaction, and is subject to the reporting requirements ~~as outlined in~~ of subparagraph (b) ~~Rule 1200-01-17-.03(6)(b) above~~ of this paragraph.

(e) Fiduciary Responsibility: Every person responsible for collecting or holding surcharges under the Act has the obligation to hold said amounts in trust for the Fund until said surcharges are paid to the Fund according to the Act and the regulations promulgated thereunder. Said person shall defend and protect, at his own expense, said surcharges from all losses and expenses of whatever nature, including but not limited to those occasioned by suits, levies, garnishments, and all other actions, losses, and expenses of whatever description, including all banking fees and charges or similar expenses. Said person shall promptly notify the Department of any action or circumstance which causes or threatens the collected surcharges with any loss or diminishment, including the person's insolvency or filing for protection under Federal bankruptcy law. All surcharges are the property of the Fund, and the person has no equitable right or claim to said surcharges. Any use of the surcharges or failure to defend said surcharges from loss or diminishment shall be deemed a violation of the trust relationship and these rules. Said person shall be liable to the Fund for all losses or diminishment of surcharges, including failure to collect. Surcharges should be deposited in a separate account used only for the purposes of this trust, or in the alternative, said surcharges should be clearly identified as trust property in the records and accounts of the person collecting the surcharge.

(7) Failure to Pay the Annual Registration or the Solvent Surcharge Fees

(a) Failure or refusal to pay a lawfully levied registration fee or solvent surcharge fee or any part of that registration fee or solvent surcharge will subject the person responsible for such payment to the provisions of T.C.A. § 68-217-108~~ (a) through (b)~~, and result in the denial of Fund access and the inability to receive Fund reimbursement.

(b) The Department shall not issue a Certificate of Registration to an owner or operator who has any facility for which fees, surcharges or penalties lawfully levied by the Department under these rules have not been paid.

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

1200-01-17-.04 Best Management Practices.

(1) ~~General~~ Purpose - Implementation of Best Management Practices (BMPs) is designed to prevent possible future releases of drycleaning solvents into the environment.

(2) Applicability - The following requirements apply to all drycleaning facilities and in-state wholesale distribution facilities.

(3) Best Management Practices (BMPs) for Drycleaning Facilities

~~(a) Class 1 BMPs~~

~~As of October 15, 1997, a~~All active drycleaning facilities shall comply with ~~Class 1~~ BMPs because they are critical for the prevention of drycleaning solvent releases.

~~1.~~(a) Compliance with Existing Regulations and Standards

Drycleaning facilities using perchloroethylene shall comply with MACT – 40 CFR 63, Subpart M ~~Rule 0400-30-31-.13~~, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities and its amendments. ~~Rule 0400-30-31-.13, et seq., addresses the following areas: standards for air emissions and equipment controls, emissions monitoring and record keeping requirements, solvent consumption record keeping requirements, inspection, maintenance, and repair activities and documentation requirements, and new machine requirements.~~ If a facility purchases more than 2,100 gallons of perchloroethylene during any period of 12 consecutive months, it shall become a major source and must meet additional requirements of 40 CFR 63, Subpart M.

~~2.~~(b) Waste Management

~~(i)~~1. As much as practicable waste containing solvent shall be recycled. No person shall place, store, or dispose of drycleaning solvent or a material or waste containing drycleaning solvent in a location or manner where such substances, either by themselves or in combination with other substances, will cause or may cause a release of drycleaning solvent either in a concentrated or diluted form to soil, sediment, ground water or surface water. Activities which are not allowed include, but are not limited to, the following:

~~(I)~~(i) No person shall dispose of or place filters, diatomaceous earth, sludges, condensate water, still bottoms or other waste material containing drycleaning solvent in a dumpster or other trash receptacle, on the ground, or in any location other than appropriate labeled storage containers for these materials.

~~(II)~~(ii) No person shall dispose of or place filters, diatomaceous earth, sludges, condensate water, separator water, still bottoms or other waste material containing drycleaning solvent in a sanitary sewer, storm sewer, septic tank, or any other underground structure which may result in a release.

~~(III)~~(iii) No person shall dispose of or place filters, diatomaceous earth, sludges, condensate water, still bottoms or other waste material containing drycleaning solvent in a location or manner such that drycleaning solvent or a waste containing drycleaning solvent is released or may be released to the soil, sediment, ground water, or surface water.

~~(IV)~~(iv) No person shall pump or transport drycleaning solvent or waste containing drycleaning solvent through underground pipes or lines which are not readily visible. Pipes or lines transporting solvent shall be placed in a trench sealed with a material impervious to PCE or the appropriate solvent(s) in use at the facility.

~~(V)~~(v) No person shall store a drycleaning solvent or waste containing a drycleaning solvent in an underground storage tank without documenting that the tank construction material is appropriate for the solvent material being stored. Underground storage tanks shall undergo upgrading and release detection as required for petroleum storage tanks in ~~Rule~~ Chapter 0400-18-01, except deferrals listed in Rule 0400-18-01-.01(1)(b) shall not apply.

~~(ii)~~2. Any waste containing or derived from dense non-aqueous drycleaning solvent shall be handled as follows, regardless of the drycleaning facility's amount of solvent consumption or waste generation. A ~~permitted~~ hazardous waste transporter ~~as defined under Division of Solid Waste Management~~ permitted in accordance with Rule 0400-12-01-.04 shall transport the material to an authorized Treatment, Storage or Disposal Facility (TSDF) or other location approved by the Tennessee Division of Solid Waste Management (TDSWM) for such wastes. A copy of all hazardous waste and hazardous material shipping manifests shall be maintained at the drycleaning facility or a designated alternate site for inspection by the Department upon request. These records shall be maintained for a minimum period of five years.

~~(iii)~~3. Any waste containing or derived from light non-aqueous drycleaning solvent shall be placed in a sealed container, removed from the facility, and disposed of at an appropriate disposal facility regardless of the amount of the drycleaning facility's solvent consumption or waste generation. A record of the date, quantity of waste removed and the disposal location shall be maintained at the drycleaning facility or a designated alternate site for inspection by the Department upon request. These records shall be maintained for a minimum of five years.

~~(iv)~~4. If a drycleaning facility is to be closed or remain out of operation as a drycleaning facility for 90 days or more, solvent and solvent containing materials are to be properly removed from the facility.

~~3.~~(c) Materials Storage

~~(i)~~1. Solvent and solvent-containing materials shall be labeled and stored in containers that are in good condition with tightly fitting lids so as to minimize the possibility of a release. Containers should be located in a non high-traffic area of the facility and in an area that is not easily accessible to the general public.

~~(ii)~~2. Material Safety Data Sheets for the drycleaning solvents that may be used at the facility shall be kept at the facility and available to the Department upon request.

~~4.~~(d) Management of Releases of Drycleaning Solvents

~~(i)~~1. All drycleaning facilities shall use release prevention methods. Facilities shall ensure that any release of drycleaning solvent is immediately contained and recovered, in order to abate to the greatest extent reasonably possible, further consequences to human health and the environment.

~~(ii)~~2. Notification Requirements

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 PEP shall take such action within twenty-four (24) hours after discovery of the danger and shall notify the Department of said actions.

~~5.~~(e) Certification

Effective October 15, 2007, each drycleaning facility shall be staffed by at least one person who is a Certified Environmental Drycleaner (CED) as certified by the International Fabricare Institute, or has a certification deemed equivalent by the Board to meet this requirement. In the event of termination of employment or loss of certification by the CED, the facility has six months to replace the CED.

~~(b) Class 2 BMPs~~

~~As of October 15, 2007, all active drycleaning facilities shall comply with Class 2 BMPs because they are critical for the prevention of drycleaning solvent releases.~~

~~1.~~(f) Containment Systems

~~(i)~~1. Dikes or other containment systems shall be installed under and around each drycleaning unit, solvent storage area and liquid waste storage areas.

~~(ii)~~2. The system for each solvent storage and liquid waste storage area should be capable of containing a leak, spill or release of drycleaning solvent up to a quantity equal to 110% of the total amount of solvent that may be used or stored in the containment area.

~~(iii)~~3. The system for each drycleaning unit should be capable of containing a leak, spill or release of drycleaning solvent up to a quantity equal to 110% of the total amount of solvent that may be stored in the largest tank within the containment area.

~~(iv)~~4. To the maximum extent feasible, the sealants and other materials to be used in the construction of containment systems should not allow the transmission of drycleaning solvent.

~~2.~~(g) Elimination of Potential Release Pathways - Flooring Integrity

To prevent the possible migration of solvents into soil, ground water or other media all cracked flooring, floor drains, or other structural conditions or defects that might act as a release pathway for solvents shall be sealed.

~~3.~~(h) Solvent Delivery Systems

Drycleaning solvent shall be delivered to drycleaning facilities in such a manner as to minimize the possibility of spills and releases of solvent during transfer of the material. No pouring of drycleaning solvents from open buckets or other similar methods will be allowed. Delivery of drycleaning solvents shall be adequately monitored to prevent overfills and spills. Beginning October 15, 2000, dense non-aqueous solvents or products delivered to drycleaning facilities shall be via closed, direct-coupled delivery systems.

(4) BMPs for In-State Wholesale Distribution Facilities

~~(a) Class 1 BMPs~~

~~As of October 15, 1997, a~~All in-state wholesale distribution facilities shall comply with ~~Class 1~~ BMPs because they are critical for the prevention of drycleaning solvent releases.

~~1.~~(a) Spill Contingency Plan

In-state wholesale distribution facilities shall have a written Spill Contingency Plan at the facility and readily available for inspection. This document shall be signed and dated by a responsible party for the facility and shall be reviewed annually and updated as needed. A log of annual reviews denoting the date of the review and facility personnel involved shall be maintained and readily available for inspection. The Spill Contingency Plan must identify and describe:

~~(i)~~1. The type and approximate quantities of drycleaning solvent located at the facility; including a to-scale facility layout map denoting the normal locations of solvents within the facility; designate the location of solvent transport vehicles;

~~(ii)~~2. Reasonably foreseeable potential releases from both normal operations and accidents at the facility;

~~(iii)~~3. The potential pathways of human exposure to drycleaning solvents resulting from potential releases;

~~(iv)~~4. The likely magnitude and nature of the human exposure resulting from potential releases and the human exposure resulting from a worst case scenario;

~~(v)~~5. Drycleaning solvent handling methods, management and training practices, and any other programs in place at the facility or used during solvent transport operations that are designed to minimize or prevent solvent releases; and

~~(vi)~~6. The specific steps to be taken in the event of a fire, explosion, solvent spill or other similar potentially catastrophic event occurring at or near the facility; identify who is the primary coordinator for such events.

~~2.~~(b) Materials Storage and Handling

~~(i)~~1. Solvent and solvent-containing materials shall be labeled and stored in containers that are in good condition with tightly fitting lids so as to minimize the possibility of a release. Containers should be located in an area that is not easily accessible to the general public.

~~(ii)~~2. Material Safety Data Sheets for the drycleaning solvents that may be stored or used at the facility shall be kept at the facility and available to the Department upon request. Monthly inspections of containers and storage areas shall be conducted and documented in a logbook. Logbooks shall be kept at the facility for a minimum of three years.

~~(iii)~~3. Drycleaning solvents shall be moved, handled, and transported with sufficient care to prevent damage to containers and releases to the environment.

~~3.~~(c) Management of Releases of Drycleaning Solvent

~~(i)~~1. In-state wholesale distribution facilities shall have designated personnel to handle chemical spills and other similar circumstances and a designated primary coordinator for spills or other release situations that may occur at the facility or during transport of chemicals.

~~(ii)~~2. All in-state wholesale distribution facilities shall use release prevention methods. Facilities shall ensure that any release of drycleaning solvent is immediately contained and recovered, in order to abate to the greatest extent reasonably possible, further consequences to human health and the environment.

~~(iii)~~3. Notification Requirement

If a PEP has reason to believe that there is or may be an imminent and substantial threat to human health related to a release at a site, the PEP shall notify the Department of that fact as soon as possible but no later than 72 hours from the time of the discovery of the potential threat to human health.

~~(b) Class 2 BMPs~~

~~As of October 15, 2007, all in-state wholesale distribution facilities shall comply with Class 2 BMPs because they are critical for the prevention of drycleaning solvent releases.~~

~~1.~~(d) Containment Systems

~~(i)~~1. Dikes or other containment systems shall be installed under and around each solvent storage area, liquid waste storage areas, and vehicle transport loading areas, or other facility features shall be in place that offer an equivalent level of protection and are designed to contain a release and prevent its migration into a sanitary sewer system or other utility pathways, onto other properties and surface areas, or into surface water, soil or groundwater.

~~(ii)~~2. Containment systems should be capable of containing a leak, spill or release of drycleaning solvent up to a quantity equal to 110% of the total amount of solvent that may be used, stored or loaded for transport in the containment area.

~~(iii)~~3. To the maximum extent feasible, sealants and other materials to be used in the construction of containment systems should not allow the transmission of drycleaning solvent.

~~2.~~(e) Elimination of Potential Release Pathways - Flooring Integrity

To prevent the possible migration of solvents into soil, ground water or other media all cracked flooring, floor drains, or other structural conditions or defects that might act as a release pathway for solvents shall be sealed.

~~3.~~(f) Solvent Delivery Systems

Drycleaning solvent shall be delivered to drycleaning facilities in such a manner as to minimize the possibility of spills and releases of solvent during transfer of the material. No pouring of drycleaning solvents from open buckets or other similar methods will be allowed. Delivery of drycleaning solvents shall be adequately monitored to prevent overfills and spills. Beginning October 15, 2000, dense non-aqueous solvents or products delivered to drycleaning facilities shall be via closed, direct-coupled delivery systems.

(5) BMPs for New and Reactivated Drycleaning Facilities and In-State Wholesale Distribution Facilities

Initial registration with the DCERP ~~after October 15, 1997~~ for active drycleaning facilities and in-state wholesale distribution facilities shall include a certification that all ~~Class 1 BMPs and Class 2~~ BMPs have been met. Any registered active drycleaning facility or in-state wholesale distribution facility that ceases operation for a period of twelve (12) consecutive months or longer, and then resumes operations must re-register with DCERP,~~. and~~ ~~s~~Such re-registration is considered an initial registration. A facility inspection may be required for the purpose of ensuring compliance. The inspection shall be done according to a format and schedule determined by the Department.

(6) Requests For Extensions For BMP Implementation

(a) For good cause shown, except where there is an unreasonable threat to human health and the environment, the Department may grant an exemption or extend the deadline for a facility to comply with a BMP under this ~~section~~ rule for a definite period of time. Good cause shall include, but not be limited to, the technical impracticability or prohibitive economic cost of BMP implementation as required under this rule.

(b) A request for an extension for BMP implementation shall be made in writing by a facility owner or operator. Requests for a BMP extension shall include: a detailed breakdown of the estimated BMP implementation costs, description of the work required to meet BMPs, an explanation as to why compliance with BMPs is technically infeasible or why the expected costs are prohibitive, and a description of any type of BMPs or other technical upgrades that have been put in place since October 15, 1997. Additional information may also be requested by the Department as part of a BMP extension request.

(7) Failure to Adopt, Install or Maintain

(a) Where an operator of a drycleaning facility or in-state wholesale distribution facility has failed to adopt, install, or maintain a BMP as required under these rules and where such action or omission significantly causes or contributes to a release or a failure to contain said releases, said person shall not be eligible under the program for reimbursement of response costs or other benefits for said release. Such failure is considered willful noncompliance with these rules.

(b) If a substantial release is caused by gross negligence the Department or the Board may withdraw Fund eligibility, withhold a registration renewal, or terminate a facility's registration under the DCERP. Such gross negligence is also considered willful noncompliance with these rules.

(8) Investigatory Powers and Duties of Board

The Board delegates to the Commissioner the following powers of investigation:

(a) To enter a facility at reasonable times to inspect for the installation and maintenance of BMPs; and

(b) To inspect and copy at reasonable times any records, reports, test results, or other information relating to BMPs.

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

1200-01-17-.05 ~~Qulaifications~~ Qualifications and Procedures for ~~Environmentasl~~ Environmental Response Activities

(1) General

(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.

(b) Applicability.

Requirements of this rule apply to all applicants.

(c) Initial abatement and site stabilization costs.

Nothing in this rule shall be construed to prohibit the implementation of initial abatement and site stabilization measures upon the discovery of a release of drycleaning solvent. The costs of such measures may be Fund eligible regardless of compliance with this rule, in accordance with subparagraph (3)(c) of Rule 1200-01-17-.08~~(3)(c)~~.

(2) Application for Entry ~~Into~~ into the Program

(a) Persons wishing to apply for entry into the program and reimbursement of costs from the Fund for eligible expenses shall first submit an application for the Department's review and approval.

(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:

1. All applications shall contain verification that the subject facility is currently registered with the Department and that all applicable fees and surcharges are paid.

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.

3. Applications for active facilities or abandoned facilities (where the application is filed by the operator of the drycleaning facility) must either:

   (i) Include a certification by the operator that the operator has full legal authority to authorize the Department's access of the facility for all solvent impact assessments and response actions; or

   (ii) If the operator lacks such legal authority, the application must be filed jointly by the operator and the property owner. The applicant(s) shall designate the person who will receive Fund reimbursement under the program and the applicant's point of contact concerning the application.

4. Applications for abandoned facilities (filed by the impacted third parties) must be filed jointly by the impacted third party and the property owner if other than the impacted third party. The applicant must certify to the best of their knowledge that the facility meets all requirements for Fund eligibility. The applicants shall designate the person who will receive Fund reimbursement under the program and the applicant's point of contact concerning the application.

5. An impacted third party who is not the real property owner of the facility may file an application, without other signatories, if a previous application has been filed and accepted for the facility which grants ingress and egress. If no previous application has been filed and approved for the facility the impacted third party must file an application jointly with the real property owner.

6. Any other information requested by the Department.

(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.

(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 re-inspected by Department staff.

(4) Fund Eligibility Determination; Opportunity to Cure

(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:

1. Of the applicant to meet the definition of a current or prior owner or operator of an active or abandoned drycleaning facility, in-state wholesale distribution facility, or an impacted third party;

2. Of the facility to meet the definition of an abandoned or active drycleaning facility, or in-state wholesale distribution facility;

3. Of an abandoned or active drycleaning facility, or in-state wholesale distribution facility to register;

4. To pay all applicable registration fees, penalties and interest;

5. To pay all applicable surcharges and penalties;

6. To implement applicable BMPs at a drycleaning facility, or in-state wholesale distribution facility;

7. To conduct an appropriate facility inspection; or

8. To comply with other requirements of these ~~R~~rules and the Act.

(b) Opportunity to Cure

1. If an active facility has failed to register with the Department, the site will not be accepted into the program and will not be eligible for reimbursement of response costs. For purposes of this determination, failure to register shall mean the failure to meet and/or cure all material registration requirements of Rule 1200-01-17-.03 before the earlier of:

(i) The filing of an application for entry into this program; or

(ii) The discovery of the release which triggers the need for a response action.

2. If an abandoned facility has not been registered by an appropriate person with the Department, the site will not be accepted into the program and will not be eligible for reimbursement of response costs until payment of all registration fees, interest and penalties pursuant to T.C.A. § 68-217-106(b).

3. If the Department's records reveal that the appropriate fees, surcharges, interest and penalties have not been paid, the site will not be accepted into the program and will not be eligible for reimbursement of response costs other than the initial facility inspection until all money owed has been paid.

4. ~~Notwithstanding the provisions of subparagraphs (3)(b) and (4)(b) of Rule 1200-01-17-.04(3)(b) and Rule 1200-01-17-.04(4)(b), i~~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~~ paragraph (7) of Rule 1200-01-17-.04, 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.

5. Real Property Owner as Impacted Third Party

(i) Notwithstanding the fact that the facility inspection reveals that applicable ~~Class 1 and Class 2~~ BMPs have not been implemented, an impacted third party that has never operated the facility and that is the real property owner of the drycleaning site will remain eligible for reimbursement of response costs beyond the initial facility inspection unless:

(I) Such party:

I. Had actual knowledge of the operator's failure to implement BMPs prior to the release, and

II. Failed to notify the Department of such operator's failure within sixty (60) days of such knowledge; or

(II) Such party failed to make a good faith effort to require the operator's compliance with applicable BMP requirements promulgated under the Act. For purposes of this rule, a good faith effort to require the operator's compliance with applicable BMPs means that the real property owner:

I. At the first reasonable opportunity, imposes an obligation under the lease or other contractual agreement on the operator to comply with applicable BMPs; and

II. Takes any other reasonable action to encourage implementation of BMPs by the operator.

(ii) Notwithstanding compliance with the provisions of ~~Rule .05~~ subpart ~~(4)(b)5~~(i) of this part, where the facility inspection reveals that applicable BMPs have not been implemented, in order for an impacted third party who is the real property owner of the site to remain eligible for Fund reimbursement:

(I) The site must be an abandoned facility;

(II) The impacted third party must cause the implementation of appropriate BMPs; or

(III) The impacted third party must terminate the tenancy of the operator of the drycleaning facility.

(iii) Eligibility for Fund reimbursement of the real property owner of the site shall not relieve the facility operator from liability for any release under any other law or for third party claims.

6. An impacted third party that is not the owner of the real property on which the facility is located is not responsible for the failure to implement BMPs and need not cure such failure. However, upon application by an impacted third party who is not the owner of the real property on which the facility is located, the Department shall notify the operator of the facility and the real property owner of the impacted third party's application and provide them with the opportunity to enter the program within a specified time period, and to implement applicable BMPs in accordance with these rules. If neither the operator of the facility nor the real property owner enters the program and corrects the deficiencies, the Department may initiate activities to evaluate the site under ~~Rule~~ Chapter 0400-15-01~~, et seq.,~~ " Inactive Hazardous Substance Site Remedial Action Program.~~"~~ The Fund

will be responsible to the Remedial Action Fund for eligible costs of the impacted third party's apportioned share of response costs, subject to the applicable deductible. Eligibility for Fund reimbursement of an impacted third party that is not the owner of the real property on which the facility is located shall not relieve the facility operator or the real property owner of the site from liability for any release under any other law or for third party claims, including without limitation liability for reimbursement of response costs paid out of the Remedial Action Fund.

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 thirty (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 thirty (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~~ Chapter 0400-15-01~~, et seq.,~~ "Inactive Hazardous Substance Site Remedial Action Program."

(5) Prioritization Investigation

(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 PEP 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 forty five (45) days of the completion of any phase of additional activities.

(b) Once the prioritization investigation is completed and a report is submitted to the Department, the Department shall evaluate all pertinent information and make a determination for further investigation and remediation of any release of drycleaning solvent. At the Department's discretion, a prioritization investigation may also be performed by the Department.

(6) Prioritization for Investigation or Interim Action

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

1. Interim Action Needed.

2. Immediate Investigation Needed.

3. Non-time Critical Investigation Needed.

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

(c) At all stages within this program, the approval of additional work to be funded by the DCERP will be done with consideration for the relative threats to human health and the environment

associated with each site. 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.

(7) Implementation of Interim Action or Solvent Impact Assessments

(a) Interim Action

1. The Department shall notify the applicant of the Department's determination of the need for interim action within sixty (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 re-prioritized for investigation.

(b) Solvent Impact Assessments

1. The Department shall notify the applicant of the Department's determination of the need for solvent impact assessment within sixty (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~~ subparagraph (6)(g) of Rule 1200-01-17-.08 minor adjustments in the approved work plan, as required based on field or subsurface conditions, do not require approval by the Department.

(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.

(d) Investigation or Interim Action Report

An investigation or interim action report shall include a description of activities undertaken during the investigation or interim action, observations made, sampling results, any adjustments to the work plan, and other information required by the Department.

(8) Remedial Alternatives Study

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.

(9) Remediation Priority Ranking

(a) Two Fund Groups

1. Based on the results of a solvent impact assessment or interim action and other relevant factors, the Department shall rank approved sites for remediation in one of two site remediation fund groups. The first group will be for sites which use or have released dense non-aqueous solvents or products. The second group shall be for sites which use or have released light non-aqueous solvents or products. A facility or site which is contaminated by both solvent types shall be placed in a group based on which solvent release poses the greatest risk to human health and the environment.

2. The amount of remediation funds which shall be segregated for each remediation priority ranking group shall be proportional to the percentage of each group's total contribution to the Fund for the immediately preceding fiscal year. If Fund money is needed to address a site which requires or may require an immediate action to protect human health, but the appropriate remediation group does not have sufficient funds to undertake the necessary activities, then the Board may authorize money to be used from the other group to perform the action.

(b) Sites will be ranked for remediation within each of the following groups:

1. Immediate Remedial Action Needed.

2. Remedial Action Pending.

3. Monitoring Only.

4. No Remedial Action Required.

(c) The Department shall notify the PEP, 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.

(d) At all stages within this program the approval of additional work to be funded by the DCERP will

be done with consideration for the relative threats to human health and the environment associated with each site.

(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.

(10) Implementation of Remediation

(a) Based on availability of funds, the site ranking, and the remediation required, the Department shall notify an 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.

(b) 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.

(c) 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.

(11) Completion Letter

After all required interim action, investigation, remediation, or other required activities are completed at the site, a completion letter shall be issued to the applicant by the Department. Following issuance of the completion 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.

(12) Non-Reimbursement Review

(a) The program may provide oversight of registered facilities requesting review, which will not be seeking Fund reimbursement. Prior to issuance of a Response Complete Letter the program will ensure that the investigative and remedial activities were comparable to sites participating in the program for reimbursement of environmental response activities and that to the extent practicable were consistent with program regulations. The requester shall submit a written request to the program for review/oversight and shall document or include the following: BMP compliance, the facility is current with all fees, surcharges, and penalties, the work has or will be performed by a Drycleaner Approved Contractor (DCAC), signed acknowledgment that costs expended will not be eligible for reimbursement from the Drycleaner Fund, and that all pertinent documents/reports have been submitted to the program.

(b) The program may provide oversight of unregistered facilities requesting reviews, which will not be seeking Fund reimbursement. The program may deny any request for a review that is not reasonable or cost effective. Prior to issuance of a Response Complete Letter the program will ensure that the investigative and remedial activities were comparable to sites participating in the program for reimbursement of environmental response activities and that to the extent practicable were consistent with program regulations. The requester shall submit a written request to the program for review/oversight and shall include an acknowledgement that costs expended will not be eligible for reimbursement from the Drycleaner Fund and shall submit all pertinent documents/reports related to environmental activity at the site. In addition the requester shall pay a program oversight fee of $5,000.

(c) Notwithstanding the request for and provision of oversight under the program pursuant to either subparagraph (a) or (b) ~~above~~ of this paragraph, any applicant may apply for entry of a facility in the program ~~under Rule 1200-01-17-.05~~ in accordance with this rule and proceed to comply with the requirements there under; provided, that any costs incurred under oversight pursuant to subparagraphs (a) or (b) ~~above~~ of this paragraph shall not be reimbursable from the program Fund. The program oversight fee ~~under~~ in accordance with subparagraph (b) ~~above~~ of this paragraph 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.

1200-01-17-.06 Withdrawing an Applicant's Grant of Approval.

(1) The Department may withdraw any favorable determination concerning any application for entry into the program previously granted if it determines that the applicant is in willful noncompliance with the provisions of the Act or these rules without giving an opportunity to cure. Willful noncompliance includes, but is not limited to:

(a) An applicant's material misrepresentation of facts in its registration application or its petition for entry into the program; or

(b) The applicant's failure to timely adopt, install or maintain an applicable BMP where such action or omission significantly causes or contributes to a release or a failure to contain said release.

(c) An applicant's intentional misrepresentation of material environmental conditions concerning the applicant's site; an applicant's unreasonable delaying submittal of pertinent site data and information; an applicant's filing or reporting of false, misleading, or inaccurate material information with the Department; or any other such intentional actions taken by the applicant which significantly impedes the Department's ability to properly evaluate the site and/or determine appropriate response actions for that site.

(2) Order Withdrawing Grant of Approval

The withdrawal of ~~a petition's~~ an applicant's grant of approval shall be accomplished by the issuance of a Commissioner's Order pursuant to Rule 1200-01-17-.10. Said order shall include a statement of the facts constituting the alleged violations. The Commissioner's Order may also provide for the immediate suspension of reimbursement payments from the Fund and for the return of any Fund payments made to any person that was ineligible at the time of receipt of said funds. Known impacted third parties shall also be sent notice of the withdrawal of approval by the Department. Notice to impacted third parties shall be sufficient if written notice is provided to any lessor of real property, known to the Department, on which an active or abandoned drycleaning facility or in-state wholesale distribution facility is located, as well as any third party, known to the Department, who owns or leases property that is known or suspected by the Department to have been contaminated from the release in question by solvents or their degradation products. The order shall be delivered by personal service or sent by certified mail, return receipt requested.

(3) Appeal of Commissioner's Order

(a) Any person against whom such an order is issued may appeal said order to the Board by filing a written petition pursuant to Rule 1200-01-17-.10 of these regulations. The recipient of the order shall provide a copy of said appeal to known impacted third parties at the time of its filing and provide reasonable notice of the date set for a hearing of the petition. A suspension of Fund payments by the Department shall remain in effect pending any appeal of a Commissioner's Order.

(b) Should the recipient of the order and the Department agree to hear a contested petition at a time other than the time communicated to impacted third parties, then the known impacted third parties shall be notified by the recipient of the order of the new hearing date at least five business days in advance of the hearing.

(c) Following the hearing of a contested petition, the Board shall determine whether the petitioner should be eligible for reimbursement of some or all of its expenses from the Fund. If the Board determines that only part of the petitioner's expenses should be reimbursable, the petitioner shall be liable for the release in question, save for those expenses identified as reimbursable by the Board, and shall not otherwise be eligible for program benefits.

(4) Except as provided in ~~Rule .06~~ paragraph (5) of this rule, 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.

(5) The Department may, through an order issued pursuant to Rule 1200-01-17-.10, withdraw any favorable determination concerning any otherwise eligible party who:

(a) Contributes to or cooperates in a material misrepresentation in another eligible party's petition within its knowledge; or

(b) Fails to timely inform the Department or Board of a material misrepresentation in another eligible party's petition within its knowledge or acquiesces in such failure.

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

1200-01-17-.07 Reserved for Cleanup Goals / Cleanup Actions.

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

1200-01-17-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund.

(1) Fund Obligations

(a) The Commissioner shall obligate money from the Fund based on the following procedures:

1. Available monies in the Fund shall be obligated for response activities based on the priority ranking system and statutory limitations. For sites which have equivalent ranking status within a single group, funds will be obligated according to the chronological order in which the complete application for entry into the program was received.

2. Available monies in the Fund shall be specifically designated for response activities as such activities are approved and authorized for implementation by the Department.

(b) The Commissioner will make payments from the Fund when:

1. The applicant has petitioned the Board for entry into the program, has complied with all requirements for entry into the program, and has been accepted by the Board.

2. A reimbursement request is received, according to a schedule and format determined by the Department, for response costs associated with a release of drycleaning solvent for which the Department has authorized the work related to such response costs, subject to a determination by the Department that the costs are reasonable and/or consistent with the related work plan and cost proposal authorized by the Department.

(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~~ these rules. 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~~ these rules shall be eligible for reimbursement according to the law, regulations and guidance in effect at the time the activities were performed. ~~a~~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.

(d) All claims against the Fund are obligations of the Fund and not of the state, and any amounts to be paid under this ~~part~~ rule are subject to the availability of sufficient monies in the Fund. The full faith and credit of the state shall not in any way be pledged or considered to be available to guarantee payment from such Fund.

(2) Scope of Fund Coverage

(a) The Fund will provide reimbursement for the reasonable cost of Department-authorized inspection, investigation and remediation, exclusive of interest, at sites accepted into the program. All costs consistent with cost proposals approved by the Department shall be considered reasonable costs.

~~(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 1200-01-17-.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.~~

(b) The following deductibles shall apply per site for active drycleaning facilities, abandoned drycleaning facilities and in-state wholesale distribution facilities that petition the DCERP Cleanup Program:

1. For petitions received prior to the effective date of this rule amendment, deductibles that apply are those in effect for the active drycleaning facilities, abandoned drycleaning facilities or in-state wholesale distribution facilities when the site entered the cleanup program.

2. For petitions received on or after July 1, 2011, the deductible shall be 10% per reimbursement with a maximum deductible of $50,000.

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

(3) Authorized Disbursements from the Fund

(a) Whenever the Commissioner determines a release has occurred at an eligible site, the Department shall, subject to the provisions of these rules including site prioritization, disburse monies available in the Fund to provide for reimbursement of the reasonable cost of:

1. DCERP authorized inspection, investigation, assessment and cleanup of sites contaminated by a release of drycleaning solvents, which may consist of clean-up of affected soils, groundwater, sediment, surface water, air or other environmental media using cost-effective alternatives that are technically feasible and reasonable, and that provide adequate protection of the public health, safety and welfare and minimize environmental damage.

2. The interim replacement of and permanent restoration of potable water supplies.

(b) Where the Commissioner has determined that an immediate response to an eligible site was necessary as a result of an imminent and substantial danger, with the response funded by the Hazardous Waste Remedial Action Fund, the costs of any such response actions may be reimbursed from the Fund, with the Board's approval.

(c) The costs for reasonable initial abatement and site stabilization activities are Fund eligible, up to $5,000 and subject to applicable deductibles, without submission and prior Department approval of a cost proposal. The costs must be directly associated with containing or addressing a release of solvent or material containing solvent. Normal operating practices, including but not limited to the proper disposal of solvent or material containing solvent, are not considered initial abatement or site stabilization activities.

(d) The costs for implementing an initial Facility Inspection required by the Department pursuant to ~~Rule .05~~ paragraph (3) of Rule 1200-01-17-.05 are eligible for reimbursement, regardless of whether the Facility Inspection determines that the site is eligible or ineligible for further reimbursement.

(e) Costs incurred by the Department in the administration of the Act and these rules shall be charged to the Fund.

(f) The Fund shall be available to the Board and the Commissioner for expenditures for the purposes of providing for the investigation, identification, and for the reasonable and safe cleanup, including monitoring and maintenance of sites as provided in the Act.

(g) The Commissioner may enter into contracts and use the Fund for:

1. Hiring consultants and personnel;

2. Purchase, lease or rental of necessary equipment;

3. Conducting Interim Actions; and,

4. Other necessary expenses.

(4) Fund Ineligible Costs

(a) The Department may not authorize expenditure of monies from the Fund in an amount in excess of two hundred thousand dollars ($200,000) per fiscal year for releases from any individual

facility, unless approved by the Board.

(b) The Department shall not authorize distribution of monies from the Fund that would result in a diminution of the Fund below a balance of one hundred thousand dollars ($100,000) unless an emergency exists at a facility that constitutes an imminent and substantial threat to human health or the environment.

(c) The Department shall not authorize distribution of Fund monies as specified in T.C.A. § 68-217-107(d).

(d) The Department shall not authorize distribution of Fund monies for response actions not undertaken in accordance with the regulations and guidance established by the Board.

(e) Monies held in the Fund shall not be used to reimburse costs incurred by owners or operators of facilities in conducting repairs, retro-fits, or the implementation of best management practices.

(f) The Fund shall not be obligated and shall not pay out any funds for any non-response type of damages, losses, costs, or expenses of any kind, including but not limited to stigma damages or diminution of value to real or personal property caused for any reason, including but not limited to a release of solvents or any activities approved under the Act or these rules; the restoration or repair (other than response actions) of any real and personal property for any reason, including but not limited to damages resulting from the release of solvents or any activities approved under the Act or these rules, or injury or death caused for any reason, including but not limited to a release of solvents or any activities approved under the Act or these rules. In addition, the Fund shall not be used for the landscaping of sites but shall only be used to restore those portions of the site affected by Fund approved activities to a safe condition. Finally, the Fund shall not be obligated and shall not pay any penalties or fines, or other punitive expenses levied or incurred for any reason, including but not limited to a release of solvents or any activities approved under the Act or these rules.

(g) The Fund shall not be obligated and shall not pay out any funds for costs in which there was no prior written DCERP authorization or which were incurred prior to the effective date of these rules.

(h) Monies held in the Fund shall not be used to reimburse owners or operators of facilities conducting investigative or remedial activities under paragraph (12) of Rule 1200-01-17-.05~~(12)~~.

(5) Maintaining Fund Eligibility

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

(a) The owner or operator of the facility shall remain in material compliance with the Act and program regulations, including but not limited to applicable BMPs.

(b) All required fees and surcharges shall be paid.

(c) Adequate records shall be maintained and made available to the Department upon request.

1. Drycleaning facilities are required to maintain the following records on site and reasonably available for inspection, or at a readily available alternative site:

(i) Documentation of solvent purchases or transfers;

(ii) Adequate employee payroll records which document and support the facilities FTEs;

(iii) Waste disposal manifests;

(iv) Documentation of equipment maintenance, repairs or retro-fits, including best management practices;

(v) Documentation of all site investigation and cleanup plans and expenses.

2. In-state wholesale distribution facilities are required to maintain the following records on site and reasonably available for inspection, or at a readily available alternative site:

(i) Documentation of solvent sales or transfers;

(ii) Waste disposal manifests;

(iii) Documentation of equipment maintenance, repairs or retro-fits, including best management practices;

(iv) Documentation of all site investigation and cleanup plans and expenses.

3. Unless the Department instructs otherwise, all records required to be maintained by this ~~subsection~~ subparagraph shall be retained for three years after:

(i) The issuance of a certificate of completion of all necessary investigation and remedial work or further that no investigation and remediation is necessary with respect to a site; or

(ii) Ownership and all records pertaining thereto are transferred to a new owner.

(d) After being accepted into the DCERP, report to the DCERP any solvent releases which may impact the investigation or remediation of the site.

(6) 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:

(a) Applicants must perform initial response actions in accordance with Rule 1200-01-17-.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.

(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 potentially eligible party and the contractor. The Department must be provided a letter signed by both parties confirming that a contractual relationship exists for environmental response actions.

(c) Following completion of necessary site stabilization actions, subsequent inspections, investigative and corrective actions and their cost estimates must be approved by the Department in accordance with Rule 1200-01-17-.05 and performed by DCACs approved in accordance with the requirements of these rules. Response actions, other than those identified in ~~Rule .08(6)~~ subparagraph (a) of this paragraph, performed prior to acceptance of an associated cost proposal shall not be eligible for reimbursement, unless they were undertaken at the specific direction of the DCERP.

(d) Upon review of a cost proposal for Fund eligible activities the Department may:

1. Accept the cost proposal and authorize work to be initiated; or

2. Request a modification to or clarification of the cost proposal if projected costs are not determined to be reasonable.

(e) In addition to the requirements of ~~.08(6)~~ subparagraph (c) of this paragraph, 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.

(f) Upon acceptance of a cost proposal by the Department, sufficient monies will be obligated from the Fund for completion of the particular phase of work along with authorization for the initiation of the proposed action. Payments from the Fund shall be subject to the availability of funds at the time of acceptance by the Department.

(g) The cost of completing any task in an approved work plan that exceeds the amount in the accepted cost proposal, may be denied by the Department unless:

1. An amended written cost proposal is submitted and approved before the original cost proposal is exceeded; or

2. Oral approval is given by the Department and within two working days, a written amended cost proposal consistent with such oral approval is submitted to the Department.

(h) The DCAC shall keep and preserve detailed records demonstrating compliance with approved investigative and response action plans, and all invoices and financial records associated with costs for which reimbursement will be requested. These records shall be maintained by the DCAC for at least three years after the response action has been completed for a site.

(7) Applications for Reimbursement

(a) Applications for reimbursement of response costs shall be submitted in a format established by the Department and shall, at a minimum, include an itemization of all labor charges (individual name, DCERP personnel category, date, rate and number of hours worked), analytical charges, equipment charges, and other categories which may be identified by the Department, or which the applicant may wish to provide.

(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 in-state 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.

(c) If a site has previously been the subject of an application for Fund eligibility that was denied, and where the reasons for denial have been properly cured or are subject to cure as set forth in these ~~R~~rules, the burden shall be on the applicant to demonstrate by substantial and material evidence in the application that an application does not include actions or expenses for releases that were the subject of applications that have been previously denied.

(d) Applications for payment for the implementation of response actions may be submitted sixty (60) days following initiation of work to implement the work plan and at sixty (60) day intervals thereafter until completion of the authorized activities. For work phases that will be completed within a relatively short time frame (i.e., three months or less), a reimbursement application should be submitted following the completion of the pre-approved work plan. Interim billings for

phases of work that will not be completed in a short time frame shall include the expenses for a specified period of time (~~i.~~e.g., January-March) and shall, to the extent practicable, not have overlapping dates with prior or subsequent interim billings. The Department may request a status report to be submitted with each application for payment. Upon request, the Department may approve interim payments at more frequent intervals.

(e) All payments shall be subject to review for compliance with these rules by the Department. Should a site inspection or other information reveal a discrepancy between work performed and the work addressed by a payment application, the Department may deny payment or may require the Fund to be reimbursed for money already disbursed.

(f) Notwithstanding the provision of ~~Rule 1200-01-17-.08(7)~~ subparagraph (d) of this paragraph, in order to be eligible for payment from the Fund, an application for reimbursement must be received by the program within one year from the date expenses were incurred regardless of the duration of the work phase. For example: the personnel expenses of a geologist performing work activities, related to a specific site, on May 10th of the prior year would not be reimbursable by the program if the reimbursement application was received on or after May 11th of the current year.

(g) If the Fund reimburses a party for response costs under these rules for which the owner or operator of a facility has insurance coverage, the Fund is subrogated to the rights of the owner or operator with respect to that insurance coverage to the extent of the reimbursement. Acceptance of reimbursement under this ~~subdivision~~ subparagraph constitutes an assignment by the party with respect to any insurance coverage applicable to the costs that are reimbursed.

(8) Fund Payment Procedures

(a) Payments from the Fund will be made directly to the applicant in cases where the PEP 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 ninety (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 ninety (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 PEP of those costs denied reimbursement and the reasons for denial, and provide a forty-five (45) day period in which the PEP 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 thereunder.

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

1200-01-17-.09 Contractors.

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.

(1) A Drycleaner Approved Contractor ("DCAC") is a person or company responsible for conducting and overseeing the inspection, investigation, or remediation of a drycleaner environmental response program (DCERP) site. The Department shall establish and maintain a list of approved DCACs according to this rule ~~section~~. The DCAC list shall have three categories. There shall be one category for companies approved to perform facility inspections, a second category for companies approved to perform investigative work, and a third category for companies approved to perform remediation work. There may be one DCAC for facility inspection, another DCAC for site investigation, and one or more DCAC(s) for remediation of the site. There is nothing in these rules which prevents a company from applying to qualify for multiple DCAC categories. If a DCAC is approved for multiple categories, then the DCAC may perform services in any or all of the categories for which the DCAC is approved.

(2) A company will be approved to perform Fund eligible work upon satisfaction of the following:

(a) The company submits a written application to become a DCAC with the Department according to a format determined by the Department. The application shall include the following and other information requested by the Department:

1. Statement of organization, experience, and personnel including the following:

(i) Provide the organizational history of the company including, but not necessarily limited to, years in business; location of offices; form of business - sole proprietor, partnership, corporation; and a list of officers and principals of the company including their mailing addresses and telephone numbers;

(ii) Provide a copy of the organization's latest audited annual financial statement or other approved alternate proof of financial stability;

(iii) Provide a letter from an insurance company or companies approved to do business in the State of Tennessee which states that within thirty (30) days of notification that the company has been approved for addition to the DCAC list, the company can have in effect insurance as required in these rules with the Division of ~~Superfund~~ Remediation listed as a certificate holder on the policy(ies);

(iv) A licensed contractor that is applying to be in the remediation category shall attach a copy of the certificate documenting that the company has a valid Tennessee Contractor's License with a Specialty Classification to perform remediation of hazardous substance or hazardous waste sites or the equivalent with a monetary limitation of at least five hundred thousand dollars ($500,000);

(v) Prepare a detailed organizational chart showing only the employee names and titles ~~who~~ that will perform work under the DCERP. Describe the project organization relating to staff ~~who~~ that will perform work under the DCERP. State which staff will perform which services and include each person's job title. Note the location of all staff;

(vi) Attach a resume for each person listed on the organizational chart. Organize resumes in sections by office so that it is clear which personnel work from which office. Resumes shall, at a minimum, include the following information:

(I) Description of the education of the person including the school and year

graduated, degree and major area of study, and specialized training including, but not limited to, health and safety training;

(II) Include the current position, title and applicable licenses and registrations which the person holds. If a person is listed on the organizational chart as an engineer that person must have a Tennessee Professional Engineer License number or an Engineer Intern number listed on the resume. Any geologist listed on the organizational chart must have a Tennessee Geologist Registration number on the resume;

(III) Provide a detailed employment history of the person including, but not necessarily limited to, the number of years and type of experience, description of job duties for each position held, and names of companies for which the individual has worked; and

(IV) List the sites on which the employee worked where the employee either performed facility inspections, investigation, or remediation activities related to contamination resulting from the release of dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs). Describe the activities and duties performed by the employee.

(vii) DCAC Experience Requirements

(I) If the company desires to be approved to perform facility inspections, provide descriptions of a minimum of three (3) different facility inspections or facility audits performed by current company staff during the past five (5) years at facilities which use or have on-site dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs).

(II) If the company desires to be approved to perform investigations at sites in the DCERP, provide descriptions of a minimum of three (3) different investigations of contamination resulting from the release of dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs), in soil and/or ground water, which current company staff ~~have~~ has performed in the past three years.

(III) If the company desires to be approved to perform remediation phase work at sites in the DCERP, provide descriptions of a minimum of three (3) different soil and/or ground water remediation projects involving contamination resulting from the release of dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs), which current company staff have performed in the past three (3) years. Remediation phase work includes, but is not limited to, preparing work plans and cost proposals for remedial phase work; designing, conducting, and evaluating remedial pilot tests and associated data findings; writing and amending Remedial Alternatives Study reports or other remediation phase documents that may be requested by the Department; designing, conducting, evaluating, and monitoring full-scale remediation site work; and implementing full-scale plans of remediation.

(IV) If a company desires to be approved for a combination of facility inspection, site investigation, and site remediation, it must submit a minimum of three (3) sites for each category for which the company is applying.

(V) In these descriptions, state the duties performed, type of facility inspected or contaminants investigated or remediated, results of the inspection, investigation or remediation and other pertinent information

which would show the company's competency in inspection, investigation and/or remediation of contamination resulting from the release of dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs). Only include sites worked by personnel who will work on DCERP sites. Indicate the personnel who performed the inspection, investigation, or remediation and describe their job duties. Limit the discussion to two (2) typed pages per site per category;

(viii) Attach letters of recommendation for two (2) sites described above from clients describing the company's facility inspection or facility audit activities at the site and the clients' opinions of the quality of work performed by company's personnel if the company is applying to be approved for drycleaner inspection activities. Attach letters of recommendation for two (2) sites described above from clients describing the company's investigation activities at the site and the clients' opinions of the quality of work performed by company's personnel if the company is applying to be approved for investigation activities. Attach letters of recommendation for two (2) sites described above from clients describing the company's remediation activities at the site and the clients' opinions of the quality of work performed by company's personnel if the company is applying to be approved for remediation activities. If letters of recommendation are unavailable, other approved forms of verification can be substituted; and

(ix) If the company, its officers, its principals, or any of the employees referenced in ~~Rule .09(2)(a)1.~~ subpart (i) or ~~Rule .09(2)(a)1.~~ (vi) of this part have previously been removed from the DCAC list or have been the subject of any professional license revocation or suspension proceeding, or have been assessed a civil penalty for violation of any environmental law in Tennessee or comparable law in another jurisdiction, describe the circumstances, including the reason(s) for such action and the response action(s) taken by the company to assure there will not be similar problems in the future;

2. A notarized statement, sworn by an executive officer or principal of the company including the following provisions:

(i) Neither the company nor any of the company's officers, principals, and employees have been convicted of, pled guilty to, or pled nolo contendere to violating any of the following or comparable environmental law in another jurisdiction:

(I) Environmental Vandalism (T.C.A. § 39-14-408).

(II) Illegal Disposal of Hazardous Waste (T.C.A. § 68-212-114).

(III) Solid Waste Dumping (T.C.A. § 68-211-114).

(IV) Air Pollution (T.C.A. § 69-201-112).

(V) Water Pollution (T.C.A. § 69-3-115).

(VI) Destruction of Aquatic Life or Habitat (T.C.A. § 70-4-206).

(VII) Polluting of Drinking Water Supply (T.C.A. § 68-221-713).

(VIII) Leaking Underground Petroleum Storage Tanks (T.C.A. § 68-215-120).

(IX) Knowingly gives or causes to be given any false information in any report, records, or documents (T.C.A. § 68-212-213).

(ii) Neither the company nor any of the company's principals, officers, and

employees have been convicted of, pled guilty to, or pled nolo contendere to any of the following or a comparable law in another jurisdiction:

(I) Tampering with or fabricating evidence (T.C.A. § 39-16-503).

(II) Destruction of and tampering with governmental records (T.C.A. § 39-16-504).

(III) Destruction of valuable papers with the intent to defraud (T.C.A. § 39-14-130).

(IV) Forgery (T.C.A. § 39-14-114).

(V) Theft of services (T.C.A. § 39-14-104).

(VI) Theft of property (T.C.A. § 39-14-103).

(iii) The company understands that reimbursement from the Fund will be in accordance with the reasonable rate schedule as established by the Department; and

(iv) The company and its personnel have the licenses and registrations required by the State of Tennessee to perform the activities that said company proposes to perform.

(b) DCAC Registration Fee

1. A non-refundable registration fee of five hundred dollars ($500.00) shall be submitted with the application if the company is applying to be in one category of the DCAC list and a non-refundable fee of seven hundred fifty dollars ($750.00) shall be submitted if the company is applying to be in more than one category on the DCAC list.

2. A company with more than one office location may either submit one combined DCAC application for all office locations under a single registration fee, or the company may submit a separate DCAC application for each office location. Should one office location be disqualified under this program, any other offices that were included in a multiple-office DCAC application package under one registration fee would then be disqualified from the DCAC program.

(c) Companies which satisfactorily demonstrate to the Department's review committee that the company has: successfully performed significant past activities in facility inspection, investigation and/or remediation of contamination resulting from the release of dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs), through the site descriptions and letters of reference required in this ~~R~~rule, not violated environmental or other laws referenced in the sworn statement, paid the appropriate fee, and completed the other requirements listed above shall be included in the next published approved contractor list in the appropriate category(ies) following receipt by the Department of the required insurance certificate. For initial evaluation to become a DCAC, it shall be assumed by the Department that if a company has sufficient experience and qualifications to perform investigation and/or remediation activities at sites contaminated by dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs), then the company has sufficient qualifications to perform comparable activities at sites contaminated with Stoddard or other drycleaning solvents. If the company, its officers, its principals, or any of the employees referenced in ~~Rule .09(2)~~ subpart (a)1(i) or ~~Rule .09(2)(a)1.~~(vi) ~~above~~ of this paragraph have previously been removed from the DCAC list or have been the subject of any professional license revocation or suspension, or have been assessed a civil penalty for violation of any environmental law in Tennessee or comparable law in another jurisdiction, the company shall also be required to satisfactorily demonstrate to the Department that the circumstances, including the reason(s) for such actions, have been corrected and will not reoccur. A company which is not approved as a DCAC may appeal the Department's determination to the Board;

however the appeal must be filed within thirty (30) days of the Department mailing the certified letter notifying company of non-approval. The list of approved contractors shall be updated at least annually.

(d) Prior to October 31st of each year, each DCAC shall submit a renewal application including the following and other information requested by the Department on the renewal application:

1. List of personnel who will work on DCERP sites in the upcoming year and each person's job title, job descriptions, office location, and telephone number. For employees who have not had a resume submitted to the DCERP on a previous application and personnel who have either received or lost licenses or registrations, submit resumes as described under the initial application process.

2. A valid insurance certificate showing insurance required in these rules.

3. A non-refundable fee of two hundred dollars ($200.00) if the company is renewing as a DCAC in one category and a non refundable fee of three hundred fifty dollars ($350.00) if the company is renewing as a DCAC in two or more categories.

4. For a licensed contractor in the DCAC remediation category, also include documentation of a valid contractor's license to perform hazardous waste or hazardous substance site remediation or the equivalent with a monetary limitation of at least five hundred thousand dollars ($500,000).

(3) To remain on a list of approved DCACs:

(a) The DCAC shall abide by and comply with the Rules and Regulations of the Department of Finance and Administration, Chapter 0620-03-03, Personal Service, Professional Service and Consultant Service Contracts and the terms of any contract entered into with the owner or operator of a facility, or impacted third party.

(b) The DCAC shall have written contract(s) with all contractors/subcontractors, and these contract(s) shall contain provisions that contractors/subcontractors will abide by and comply with the Rules and Regulations of the Department of Finance and Administration, Chapter 0620-03-03, Personal Service, Professional Service and Consultant Service Contracts. Contract(s) between the DCAC and contractors/subcontractors shall also contain provisions that all site workers working under authority of contractors/subcontractors shall have applicable health and safety training when required by the Tennessee Department of Labor or OSHA.

(c) Site workers employed by the DCAC or its subcontractors shall have the applicable health and safety training when required by the Tennessee Department of Labor or OSHA.

(d) The DCAC shall have a written contract with the owner or operator of the facility, or impacted third party at each Fund eligible site and the contract shall contain the following sentences conspicuously located on the first page of the contract:

(Company's Name) WILL/WILL NOT (mark one) USE THE DRYCLEANER ENVIRONMENTAL RESPONSE PROGRAM'S REASONABLE RATE SCHEDULE WHEN INVOICING (insert name of drycleaner owner, operator, or impacted third party) FOR THE EXPENSES INCURRED IN THE INVESTIGATION AND/OR CLEANUP OF THIS SITE;

ON BEHALF OF (Applicant's Name), (Company's Name) WILL PREPARE AND SUBMIT TIMELY REIMBURSEMENT APPLICATIONS IN ACCORDANCE WITH DCERP RULES INCLUDING RULE 1200-01-17-.08(7)(d) WHICH ALLOWS APPLICATIONS FOR PAYMENTS TO BE SUBMITTED SIXTY (60) DAYS FOLLOWING INITIATION OF WORK AND AT SIXTY (60) DAY INTERVALS THEREAFTER. IN ADDITION, RULE 1200-01-17-.08(7)(f) REQUIRES THAT IN ORDER TO BE ELIGIBLE FOR PAYMENT FROM THE FUND, AN APPLICATION FOR REIMBURSEMENT MUST BE RECEIVED, BY THE PROGRAM, WITHIN ONE (1) YEAR FROM THE DATE EXPENSES WERE INCURRED REGARDLESS OF THE DURATION OF THE

WORK PHASE.

(e) The DCACs services will be performed in a manner consistent with the level of care and skill ordinarily exercised by members of their profession practicing in the State of Tennessee, under similar conditions, and at the time the services were rendered. The DCAC shall not knowingly, willfully, or recklessly cause the spread of contamination nor inhibit response action at the site.

(f) The DCAC will perform activities consistent with these rules and gather and maintain documentation and records necessary or required for supporting and filing claims with the DCERP Fund.

(g) The DCAC shall follow methods and procedures established by the DCERP for facility inspection, oversight of remediation, investigation and/or remediation of sites. The DCAC shall collect, gather, compile and maintain documentation requested by the Department.

(h) Unless otherwise specifically approved by the Department, the following shall apply. All work done by the DCAC shall have the prior approval of a Registered Professional Engineer or Professional Geologist who is licensed/registered with the Tennessee Department of Commerce and Insurance, and the work shall be performed as specified according to a plan approved by the Department. All plans and reports submitted to the Department shall be prepared and signed by the Registered Professional Engineer or Professional Geologist who prepares or is responsible for the plan or report. A Registered Professional Engineer or Professional Geologist shall make periodic site visits to verify whether or not the work performed is as specified by the Registered Professional Engineer or Professional Geologist, and according to a plan approved by the Department. The DCAC shall require a Registered Professional Engineer or Professional Geologist to submit a signed certification based on their personal observation and review of job site records stating whether or not the work is performed as directed by the Registered Professional Engineer or Professional Geologist, and whether the work is performed in accordance with a plan approved by the Department. If the work is not performed according to the above specifications, the certification shall include a listing of how the work performed varies from the approved plan, and/or the authorization of the Registered Professional Engineer or Professional Geologist and the specific reason for each variation. The certification for the appropriate phase of work shall be submitted with the report describing that phase of the work including, but not necessarily limited to, investigation reports, remediation reports, and as-built drawings.

(i) The DCAC shall indemnify, and hold harmless the Department and the Board as well as officers, agents and employees from all claims, losses, or suits accruing or resulting to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts or omissions of DCAC relating to work as an approved contractor.

(j) The DCAC shall have all applicable license(s) and registration(s) required in the State of Tennessee and the local government where any work is performed;

(k) The DCAC shall maintain liability insurance coverage of the types and with the minimum amounts described in the Table below, or the equivalent. The DCAC shall provide certification, with the Division of ~~Superfund~~ Remediation listed as a certificate holder, to the Department of such coverage during the initial application process and yearly with the renewal application thereafter, or more frequently as necessary to keep the Department updated as to the DCACs current insurance coverage. A lapse of required insurance coverage is sufficient cause for removal of the company from DCAC status. Insurance shall be through an insurance company or companies approved to do business in the State of Tennessee and shall be in effect prior to the company becoming a DCAC. The insurance shall be written in a comprehensive form, satisfactory to the Department. The general liability and pollution insurance policies shall have the Department of Environment and Conservation and the State of Tennessee named as an additional insured on Contractor's policies and these policies shall have endorsements for a waiver of subrogation between the Contractor and the State.

1. Worker's Compensation:

(i) State Statutory

(ii) Employer's Liability $500,000

(Without restriction as to whether covered by Workmen's Compensation Law)

2. Comprehensive General Liability (including Premises - Operations: Independent Contractor's Protective: Products and Completed Operations; Broad Form Property Damage; contractual):

(i) Combined single limits for bodily injury and property damage:

$1,000,000 Each Occurrence

$2,000,000 Aggregate

(ii) Products and Completed Operations to be maintained for one (1) year after final payment.

(iii) Property Damage Liability insurance shall include coverage for perils of explosion, collapse, and underground hazard.

(iv) Comprehensive General Liability shall apply per job.

3. For DCACs qualifying in the contractor categories for investigation activities and/or remediation activities, Pollution insurance for bodily injury and property damage:

$1,000,000 Each Occurrence

$2,000,000 Aggregate

For DCACs who will only conduct work in the facility inspection and/or remediation oversight contractor categories, the Pollution insurance requirement does not apply.

4. Personal injury:

$1,000,000 Each Occurrence

$2,000,000 Aggregate

5. Comprehensive Automobile Liability:

(i) Split limits of $500,000 (bodily injury per person)/1,000,000 (bodily injury per occurrence)/250,000 (property damage per occurrence); or

(ii) Combined single limits for bodily injury and property damage:

$1,000,000 Each Occurrence

6. The DCAC shall require that all subcontractors that perform site work shall be covered by insurance to the limits stated in these rules. Upon request, the DCAC shall secure a copy of said insurance policy for the Department.

(l) Once the DCAC receives a stop work notice, the company/DCAC shall file no additional plans, scopes of work, or cost proposals to the DCERP unless the stop work is removed by the Department or the Board.

(m) The DCAC shall submit timely annual registration renewal applications as required by ~~Rule .09~~

subparagraph (2)(d) of this rule.

(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.

(4) The Department will provide notice that applications are to be requested by publication of a legal advertisement which will provide interested firms with the information necessary to request instructions for preparation and submittal of applications and supporting documentation. Applications received within forty-five (45) days of the date of the legal advertisement shall be reviewed prior to establishing a DCAC list. Applications and supporting documentation shall be independently evaluated by members of a review committee consisting of Department staff.

(a) Applications received after forty-five (45) days from the date of the legal advertisement shall not be reviewed until a DCAC list is established. These and subsequent applications shall be reviewed by the review committee and either approved for addition to the DCAC list or denied DCAC status within ninety (90) days of receipt of the completed application with appropriate supporting documentation, or establishment of the DCAC list, whichever is later.

(b) If the review committee does not approve a company for addition to the DCAC list, the decision of the review committee may be appealed to the Board.

(c) A company that previously submitted an application but was not approved as a DCAC may submit a subsequent application for review at such time as the company believes the requirements to be a DCAC are met, except a company shall not file applications for review to be a DCAC more than two (2) times in any calendar year.

(d) An updated DCAC list shall be published at least quarterly.

(5) A DCAC may be removed from the DCAC list if the DCAC, its principals, officers, or employees has done any of the following:

(a) Violates these rules;

(b) Charged the DCERP, the owner or operator of the facility, or impacted third party for work that was not performed;

(c) Fails to obtain or maintain necessary licenses;

(d) Fails to maintain the required insurance;

(e) Files an inaccurate drycleaner program Fund reimbursement application with errors in personnel titles, rates, activities performed, equipment used, material used or other items which cause or would cause an overpayment of Fund money to the DCAC;

(f) Misrepresentation of material environmental conditions concerning the site, unreasonable delaying submittal of pertinent site data and information, filing or reporting of false, misleading, or inaccurate material information with the Department, or any other such intentional actions which significantly impedes the Department's ability to properly evaluate the site and/or determine appropriate response actions for that site;

(g) Has been the subject of any professional license revocation or suspension, or has been assessed a civil penalty for violation of any environmental law in Tennessee or comparable law in another jurisdiction;

(h) Has been convicted of, pled guilty to, or pled nolo contendere to violating any of the following or comparable environmental law in another jurisdiction;

1. Environmental Vandalism (T.C.A. § 39-14-408);

2. Illegal Disposal of Hazardous Waste (T.C.A. § 68-212-114);

3. Solid Waste Dumping (T.C.A. § 68-211-114);

4. Air Pollution (T.C.A. § 69-201-112);

5. Water Pollution (T.C.A. § 69-3-115);

6. Destruction of Aquatic Life or Habitat (T.C.A. § 70-4-206);

7. Polluting of Drinking Water Supply (T.C.A. § 68-221-713);

8. Leaking Underground Petroleum Storage Tanks (T.C.A. § 68-215-120); or,

9. Knowingly gives or causes to be given any false information in any report, records, or documents (T.C.A. § 68-212-213);

(i) Has been convicted of, pled guilty to, or pled nolo contendere to violating any of the following or a comparable law in another jurisdiction;

1. Tampering with or fabricating evidence (T.C.A. § 39-16-503);

2. Destruction of and tampering with governmental records (T.C.A. § 39-16-504);

3. Destruction of valuable papers with intent to defraud (T.C.A. § 39-14-130);

4. Forgery (T.C.A. § 39-14-114);

5. Theft of services (T.C.A. § 39-14-104); or,

6. Theft of property (T.C.A. § 39-14-103);

(j) Is found to have engaged in the unauthorized practice of engineering, contracting, or geology under T.C.A. § 62-2-101, et seq., T.C.A. § 62-6-101, et seq., or T.C.A. § 62-36-101, et seq., or a comparable law in another jurisdiction by the appropriate regulatory agency or court;

(k) Performs a non-approved action which increases costs for the Fund, the drycleaner operator, or the impacted third party;

(l) Files three (3) plans which are rejected by the Department as deficient for similar reasons or fails to correct a plan based on comments from the DCERP without supplying acceptable explanation to DCERP;

(m) Files plan(s) or report(s) which do not bear the appropriate signature and Tennessee license/registration number of a Registered Professional Engineer or Professional Geologist;

(n) Deviates from a plan or scope of work as approved by the Department without the approval of the Department. This includes, but is not limited to, the following:

1. Failure to follow Quality Assurance and Quality Control approved in the plan;

2. Failure to follow the schedule for implementation approved in the plan; or

3. Failure to perform the activities listed or described in the plan.

(o) Fails to submit a complete renewal application by April 1 in the format required by the Department;

(p) Performs work at a DCERP site after a stop work or termination date established by the Department;

(q) Fails to perform activities required in these Rrules or allows activities required in these Rrules to not be performed;

(r) Fails to demonstrate the skills, techniques, procedures or knowledge necessary to perform DCAC work to DCERP requirements;

(s) Performs work in a category in which the DCAC is not approved; and

(t) Fails to submit timely reports or reimbursement requests to the Department.

(6) The process for removing a contractor from the DCAC list shall be as follows:

(a) The review process shall be initiated when a complaint is referred to the Department's review committee or the Department determines the company's activities as a DCAC should be evaluated.

(b) The review committee shall inform the company via certified mail that the company's activities as an approved contractor under the DCERP are to be reviewed. The company shall submit to the review committee a list of all sites where the company is performing DCERP Fund eligible work and the company shall cooperate with the review committee in any and all ways requested by the Department. The review committee shall perform its investigation and notify the company of the findings.

(c) The Department's review committee may request the company to appear at a meeting to show cause why the Department should not remove the company from the DCAC list.

(d) The company may request a meeting with the review committee.

(e) The Department shall notify the company of the review committee's decision by sending a certified letter to the last known address of company on file with the DCERP. If the review committee determines that removal of the company from the DCAC list is warranted:

1. The certified letter sent by the Department to the company shall specify a date to terminate work on Fund eligible sites. After the stop work date no activities performed by the company on any DCERP site shall be Fund reimbursable unless the company appeals to the Board and the Board determines to allow the company to continue as a DCAC or the company reapplies to the Department and is accepted by the Department.

2. The company shall have thirty (30) days from the Department mailing the certified letter notifying the contractor of removal from the list of approved contractors to request an appeal to the Board. If the company does not appeal within the required time period the decision of the review committee shall be final. An appeal to the Board will stay the removal of the contractor from the DCAC list. An appeal to the Board shall not prohibit the Department from terminating or preventing the DCAC from working on DCERP Fund eligible sites during the appeal process and any work performed after the termination date and during said termination shall not be Fund eligible whether or not the company remains on the DCAC list following appeal.

3. The Department shall notify all sites which the company identified as Fund reimbursable sites of the stop work date and that the company's work after said date is not eligible for reimbursement from the DCERP Fund unless otherwise notified by the Department.

(f) If a contractor is removed from the list, other DCACs with common officers or principals shall be reviewed to determine whether to remove those DCACs with common officers or principals from the DCAC list.

(g) If a company is removed from the DCAC list, the company or a company with any of its principals or officers can not apply for a period of one (1) year from date of removal. If a company is removed as a result of conviction of, pled guilty to, or pled nolo contendere to violation of an environmental law listed in subparagraph (5)(h) of this Rrule or other violations listed in subparagraph (5)(i) of this Rrule, the company and any of its officers or principals who were convicted, pled guilty or pled nolo contendere shall not reapply to become a DCAC under the company name or any other entity.

(7) The DCAC list shall have a category which lists the number of times a company has been removed from the DCAC list. If a company, its principals, or its officers are removed from the list three (3) times, then the contractor, its principals, and its officers are not eligible to reapply for addition to the DCAC list.

(8) The initial application, renewal applications, plans and reports, and Fund reimbursement requests shall include the following certification:

"I certify under penalty of law, including but not limited to penalties for perjury, that the information contained in this (select one or another term as appropriate: application, form, report, study) and on any attachments, is true, accurate and complete to the best of my knowledge, information, and belief. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for intentional violations."

(9) The appearance of a company on the DCAC list shall in no way establish liability or responsibility on the part of the Department, the Fund, or the State of Tennessee in regards to the services provided by the company or circumstances which may occur as a result of such services. Furthermore, the appearance on the DCAC list is not an endorsement by the Department, Board, or State of Tennessee for the company to perform any services outside of the Drycleaner Environmental Response Program.

(10) A person or company working as a subcontractor under contract to a DCAC is not required to be classified as a DCAC. The subcontractor must maintain all applicable license(s) and/or registration(s) required in the state of Tennessee for work performed. The DCAC must ensure that subcontractors performing remediation activities have a valid Tennessee Contractor's License with a Specialty Classification to perform remediation of hazardous substance or hazardous waste sites or the equivalent with a monetary limitation of at least five hundred thousand dollars ($500,000).

(11) The DCAC must be the lead contractor and cannot be a subcontractor to a non-DCAC functioning as the primary contractor. For sites with multiple DCACs, the program shall consider the DCAC with the qualifications for that particular work phase to be the primary DCAC.

(12) A Drycleaner Approved Contractor (DCAC) may employ the environmental professional labor services of contractors or individuals who are not recognized by this program as a Drycleaner Approved Contractor. In such cases, however, the DCERP still requires that the qualifications and proposed DCERP billing titles of any staff that are used on a subcontracted basis be provided to the DCERP for review. The DCAC remains responsible for the work that is done by any staff under its employ, including subcontracted staff. The DCERP also requires that any subcontracted professional labor services be billed through the DCAC and not billed to the DCERP or to the applicant separately or directly by any subcontracted labor entity. These measures are in place to ensure maintenance of the DCAC as the primary responsible party for work approved by the DCERP and work conducted and invoiced to the DCERP.

(13) It is the responsibility of DCACs working in this program to seek written clarification from the DCERP concerning whether DCERP-issued approvals of work plans, project budgets, or other such items submitted by one DCAC to the DCERP are transferable with no modifications to another DCAC. Such situations can occur when there is a change in DCAC during the course of a project. The DCERP does not consider work plans, project budgets, and other similar items to automatically remain in force and transfer 'as-is' over to the new DCAC when a change in DCAC occurs.

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

1200-01-17-.10 Enforcement.

(1) Issuance of Order

(a) The Commissioner may enforce the provisions of the Act and these rules by issuing to the responsible person an order for payment of any appropriate fees, surcharges, and penalties authorized under the Act, and said order shall be complied with within the time limit specified. Such order shall be delivered by personal service or shall be sent by certified mail, return receipt requested.

(b) The Commissioner may enforce the provisions of the Act and these rules by issuing to the responsible person an order to revoke a facility's Certificate of Registration or withhold re-issuance subject to ~~Rule .03~~ subparagraph (5)(a) of Rule 1200-01-17-.03. Such order shall be delivered by personal service or shall be sent by certified mail, return receipt requested.

(c) The Commissioner may enforce the provisions of the Act and these rules by issuing to the responsible person an order to withdraw any favorable determination concerning an application for entry into the program subject to Rule 1200-01-17-.06. Such order shall be delivered by personal service or shall be sent by certified mail, return receipt requested.

(2) Appeal of Order

Any person against whom an order is issued may secure a review of the reasonableness, propriety, or amount of such order by filing with the Commissioner a written petition setting forth the grounds and reasons for the objection and asking for a hearing before the Board. Any such order shall become final and not subject to review unless a petition is filed within thirty (30) days after its issuance. An additional three (3) days shall be permitted for filing a petition if an order is delivered by certified mail rather than personal service.

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