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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Environment and Conservation
Division:	Remediation
Contact Person:	Robin L. Heriges
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADA Coordinator
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 22nd Floor Nashville, Tennessee 37243
Phone:	1-866-253-5827 (toll free) or 615-532-0200 Hearing impaired callers may use the TN Relay Service 1-800-848-0298
Email:	Jennifer.Katzenmiller@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	2 nd Floor Conference Rooms A, B, and C		
Address 2:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	08/03/21		
Hearing Time:	1:00 p.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Alternate Hearing Option

Method 1:	<p>You may also join electronically.</p> <p>Join by going to this link: https://tn.webex.com/tn/j.php?MTID=m4430da4a966f4cb4cb9a3998acc2dec2</p> <p>Meeting number (access code): 172 918 2825 Meeting password: RuleMaking1</p>
Method 2:	<p>Join by phone 1-415-655-0001 Access code: 172 918 2825</p> <p>Join by video system</p>

Dial 1729182825@tn.webex.com
You can also dial 173.243.2.68 and enter your meeting number.

Global call-in numbers are available online at:
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Additional Hearing Information:

If it is hard for you to read, speak, or understand English, TDEC may be able to provide translation or interpretation services free of charge. Please contact Valencia A. Cambrice at (615-532-0912) for more information.

The Drycleaner Environmental Response Program (DCERP) has the responsibility of administering a program established by The Drycleaner's Environmental Response Act of 1995. The program reimburses eligible parties for the investigation and remediation of sites contaminated with drycleaning solvent. DCERP rules also require active drycleaners and solvent suppliers/distributors to implement Best Management Practices (BMPs) to mitigate the environmental impact from releases and the waste generated by facility operations. The primary purpose of these amendments is to update the regulatory language to make these rules easier to understand for the regulated community. More specifically, the rule amendments include:

- Adding clarifications and updates for program registration and BMP requirements;
- Updating the requirements for facility fund eligibility, making a program application, withdrawing an applicant's grant of approval, applicant participation in the voluntary cleanup program, and program fund obligations;
- Clarifying the eligibility criteria and the grounds for removing an applicant from DCERP (such as a failure to implement required BMPs, to timely pay its drycleaner approved contractor, or to complete approved work);
- Providing the Department a greater ability to ensure that those that do not comply with the requirements of the rules are not able to take advantage of the Drycleaner Emergency Respond Fund (DCERF) and avoid greater financial liability;
- Adding a means to submit required documents electronically;
- Requiring that drycleaning facilities develop a spill contingency plan by June 30, 2023; and
- Removing antiquated references to the drycleaner environmental response board, which was deleted from the law in 2014.

An initial set of draft rules and its redline version has been prepared for public review and may be accessed at <https://www.tn.gov/environment/ppo-public-participation/ppo-public-participation/ppo-remediation.html>.

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Tennessee Department of Environment and Conservation, Division of Remediation; Attention: Robin L. Heriges, William R. Snodgrass TN Tower, 312 Rosa L. Parks Avenue, 14th Floor, Nashville, Tennessee 37243; telephone (615) 741-4936 or email: dry.cleaners@tn.gov. However, such written comments must be received by 4:30 PM CDT, August 10, 2021, in order to assure consideration. For further information, please contact Robin L. Heriges at the above address or telephone number or by e-mail at Robin.L.Heriges@tn.gov.

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0400-15-03	Drycleaner Environmental Response Program
Rule Number	Rule Title
0400-15-03-.01	Drycleaner Environmental Response Program: General

0400-15-03-.02	Definitions
0400-15-03-.03	Registration, Fees and Surcharges, Certificate Issuance
0400-15-03-.04	Best Management Practices
0400-15-03-.05	Qualifications and Procedures for Environmental Response Activities
0400-15-03-.06	Withdrawing an Applicant's Grant of Approval
0400-15-03-.07	Reserved for Cleanup Goals / Cleanup Actions
0400-15-03-.08	Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund
0400-15-03-.09	Contractors
0400-15-03-.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 <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Amendment

Chapter 0400-15-03
Drycleaner Environmental Response Program

Chapter 0400-15-03 Drycleaner Environmental Response Program is amended by deleting it in its entirety and substituting instead the following:

Table of Contents

0400-15-03-.01	Drycleaner Environmental Response Program: General	0400-15-03-.06	Withdrawing an Applicant's Grant of Approval
0400-15-03-.02	Definitions	0400-15-03-.07	Reserved for Cleanup Goals/ Cleanup Actions
0400-15-03-.03	Registration, Fees and Surcharges, Certificate Issuance	0400-15-03-.08	Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund
0400-15-03-.04	Best Management Practices	0400-15-03-.09	Contractors
0400-15-03-.05	Qualifications and Procedures for Environmental Response Activities	0400-15-03-.10	Enforcement

0400-15-03-.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.~~ General

(a) Use of Number and Gender – As used in these rules:

1. Words in the masculine gender also include the feminine and neuter genders;

2. Words in the singular include the plural; and

3. Words in the plural include the singular.

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

(1) paragraph

(a) subparagraph

1. part

(i) subpart

(l) item

l. subitem

(2) Electronic Reporting

This chapter requires the submission of forms developed by the Commissioner in order for a person to comply with certain requirements. The Commissioner may make these forms available electronically and, if submitted electronically, then that electronic submission shall comply with the requirements of Chapter 0400-01-40.

(3) Additional Information

The Commissioner may require the submission information as deemed necessary to determine compliance with the Act or this chapter. The information required by the Commissioner shall be submitted by the date specified by the Commissioner and in accordance with the instructions accompanying the request.

(4) Investigations

(a) The Commissioner may enter a facility at reasonable times during normal business hours to inspect for compliance with this Chapter, including the installation and maintenance of BMPs best management practices required by Rule 0400-05-03-.04.

(b) The Commissioner may inspect and copy at reasonable times any records, reports, test results, or other information relating to BMPs the requirements of this chapter.

(c) The Commissioner may enter a facility at reasonable times to conduct or oversee environmental response program activities.

(7)(5) Failure to Adopt, Install, or Maintain Best Management Practices

(a) Where an operator of a drycleaning facility or in-state wholesale distribution facility has failed to adopt, install, or maintain a BMP best management practice required by Rule 0400-15-03-.04, 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 the operator may not be eligible under the program DCERP for reimbursement of response costs or other benefits for said release. Such failure is considered willful noncompliance with these rules this chapter.

(b) If a substantial release is caused by gross negligence the Department or the Board the Commissioner determines that the drycleaner failed to follow best management practices required by Rule 0400-15-03-.04, then the Commissioner may withdraw Fund DCERP 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.

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

0400-15-03-.02 Definitions.

~~Definitions~~—When used in ~~Chapter 0400-15-03 this chapter~~, the following terms have the meanings given below unless otherwise specified:

~~(1)~~“Abandoned ~~Drycleaning Facility~~ 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 through 68-217-113.~~

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

~~(4)~~“Application” means either 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~~ management practices” or “BMP” “BMPs” means those procedures, methods, equipment selections, or other practices as described in Rule 0400-15-03-.04, which when implemented, reduce or prevent the generation of ~~wastes and/~~ waste 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~~ non-aqueous solvent or ~~Product~~ 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~~ environmental response fund” or “~~DCERF~~” refers to the fund established under T.C.A. § ~~68-217-101, et seq~~ 68-217-103.

~~(11)~~“Drycleaner ~~Environmental Response Program~~ environmental response program”, or “~~DCERP~~”, means ~~that the~~ the program ~~which is~~ established under T.C.A. §§ ~~68-217-101, et seq, through 68-217-113~~ and ~~these rules this chapter~~.

~~(12)~~“Drycleaning ~~Facility~~ 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~~ approved contractor”, or “~~DCAC~~”, means a ~~contractor person~~ who has met the qualification requirements as set forth in ~~these rules this chapter~~ and has been specifically designated by the ~~Department~~ Commissioner to be an approved contractor in the drycleaner environmental response program.

~~(14)~~“Drycleaning ~~Operations~~ 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~~” 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~~ any real property premises or individual leasehold space in Tennessee on which a drycleaning facility is operating or formally operated or on which an in-state wholesale distribution facility is located or was formally located.

~~(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~~” “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 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 “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 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 “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.~~

"Petition" is synonymous with "application."

~~(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~~ 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 the DCERF~~.

~~(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 identified 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~~ 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.

0400-15-03-.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~~ wholesale distributors who sell, ~~or~~ transfer, solvent or supply drycleaning solvents and supplies to Tennessee drycleaning facilities; and
- (e) Impacted third parties.

(3) Annual Registration Fees

(a) Duty to Register

- 1. Each year, every facility conducting or intending to conduct drycleaning operations 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 on or omission regarding said from the registration form may be considered willful noncompliance with these rules this chapter and may serve as sufficient basis for the Department Commissioner's denial of an application for entry into the program DCERP, or for revocation or non-renewal of a registration issued in reliance on said representation the submitted registration form, or for a denial or withdrawal of a grant for entry into the program DCERP.
 3. Initial registration with the DCERP for active drycleaning facilities and in-state wholesale distribution facilities shall include a certification that all BMPs of Rule 0400-15-03-04 have been met.
 4. Any registered active drycleaning facility or in-state wholesale distribution facility that ceases operation for a period of 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 Commissioner.
 5. Out of state wholesale distribution facilities that supply Tennessee drycleaning facilities must be registered with the Department but do not have to pay the registration fee.
- (b) Current or prior owners or operators of abandoned drycleaning sites facilities may register said sites the abandoned facility in accordance with T.C.A. § 68-217-106(b). The interest payable shall be in accordance with Article 44 XI, 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 per-facility registration fee as follows:
- (i) Each year the number of active drycleaner facilities will be divided by the Department Commissioner 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 Commissioner 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 Department's fiscal year from when the annual per-site per-facility 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 Department 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 the operator's 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. The interest payable shall be in accordance with Article XI, Section 7 of the Constitution of the State of Tennessee.
2. Abandoned Current or prior owners or operators of 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~~ apply.
 4. ~~Beginning with the calendar year 2011, the~~ The initial registration fee for all new drycleaning facilities, regardless of solvent type used, shall be \$500. For the purpose of this part, "new drycleaning facilities" include those facilities that have ceased operation for 12 months or longer and then resume operations.
 5. Current or prior owners or operators of abandoned wholesale distributor facilities shall pay an annual registration fee of \$5,500 per year.
 - ~~5.6.~~ 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 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.~~
- (d) All wholesale distributors who supply solvent to Tennessee drycleaners shall register with the Commissioner. Each in-state 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. In-state and out-of-state wholesale distributors shall pay solvent surcharge fees for all solvent sold to Tennessee drycleaners in accordance with paragraph (6) of this rule.
 - (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 is~~ not be justification to withhold payment of any registration fee and ~~shall will~~ 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~~ Department at least two weeks prior to commencing operations. A revised registration form shall be submitted within 30 days of a change in information ~~which that~~ which requires filing a revised registration. A change in information ~~which that~~ 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~~ Department. 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~~ DCERP must ensure that all applicable registration fees for the drycleaning or in-state wholesale distribution facility are paid. The registration fee for an impacted third party shall be the same as the facility's drycleaning or in-state wholesale distribution facility would be, provided the facility is currently operating. If a drycleaning or wholesale distribution facility is not currently operating at the site property, the impacted third party would pay the abandoned drycleaning facility registration fee, subject to the ~~core~~ provisions subparagraph ~~(4)(b) (4)(d)~~ (4)(d) of Rule 0400-15-03-.05. ~~Nothing herein shall otherwise~~ This subparagraph does not affect any penalties or other liabilities incurred pursuant to the Act or ~~these rules this chapter~~, 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 to the satisfaction of the Department compliance, ~~as determined by the Department,~~ with the Act and ~~program regulations~~ this chapter, 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~~ DCERF 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~~ this chapter.
- (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~~ The Commissioner may issue an order to 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~~ this chapter.
- (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 Commissioner may notify ~~solvent suppliers for said facility of its unregistered status~~ wholesale distributors of the revocation.
- (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; demonstrating, to the satisfaction of the Commissioner, the ability to maintain compliance with the Act and this chapter; and meeting any other requirements for registration.
- (f) Any person ~~against whom such an order is issued~~ receiving an order, in accordance with subparagraph (a) of this paragraph, may appeal ~~said order~~ by filing a written petition in accordance with Rule 0400-15-03-.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~~ The surcharge fee is ~~fifteen dollars (\$15)~~ 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~~ CO₂.
- (b) The surcharge fee shall be collected by the ~~solvent supplier~~ wholesale distributor 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 received. The supplier's~~ Both the wholesale distributor's quarterly solvent sales reports and fees ~~along with and the active drycleaning facility's~~ submitted by each active drycleaning facility, will be are due by the end of the month following the reporting quarter. For the reports required by this subparagraph, the date reported shall be the date the solvent is delivered to the facility.

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

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

- (c) The operator of a drycleaning facility shall purchase solvent from a seller wholesale distributor that collects surcharge fees. Where a seller wholesale distributor fails to collect the surcharge fee on a sale of solvent, the drycleaner shall bring to the attention of said seller the wholesale distributor its obligation pursuant to the Act to collect said the surcharge fees. If the seller wholesale distributor still refuses to collect and remit said the surcharge 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 T.C.A. § 68-217-108 for failure to pay a surcharge fee. Nothing herein shall This subparagraph does not otherwise affect any penalties or other liabilities incurred by a seller wholesale distributor pursuant to the Act or these rules this chapter by failing to collect or remit surcharge fees, except that there shall be no double recovery of surcharge fees by the Department Commissioner.
- (d) A sale or transfer of solvent between drycleaners shall require that the seller purchasing drycleaner collect the surcharge for remittance to the Department, if a surcharge has not already been collected on said the sale or transfer of solvent as part of a prior transaction, and if the purchasing drycleaner 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 the collected surcharges in trust for the Fund DCERF until said the collected surcharges are paid to the Fund DCERF according to the Act and this chapter. Said The person holding the collected surcharges shall defend and protect, at his the person's own expense, said the collected 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 The person holding the collected surcharges shall promptly notify the Department Commissioner 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 federal bankruptcy law. All surcharges are the property of the Fund DCERF, and the person has no equitable right or claim to said the surcharges. Any use of the surcharges or failure to defend said the surcharges from loss or diminishment shall be deemed a violation of the trust relationship and these rules this chapter. Said The person holding the collected surcharge shall be liable to the Fund DCERF 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 the 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 DCERF access and the inability to receive Fund DCERF 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 this chapter have not been paid.

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

0400-15-03-.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. Failure to implement BMPs may affect the facility's fund

eligibility pursuant to Rule 0400-15-03-.05.

(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 To prevent drycleaning solvent releases, owners and operators of 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. Except for the limited exemption under T.C.A. § 68-217-113, this chapter does not exempt an owner or operator of any facility from complying with all requirements applicable to the operation of a drycleaning facility or wholesale distributor. Failure to comply with other Department regulations or regulations from local Department of Health is a violation of this rule.~~

(b) Spill Contingency Plan

Drycleaning 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. Existing facilities will be required to have a Spill Contingency Plan by June 30, 2023. New facilities that open after June 30, 2023 will be allowed a grace period of up to six months to prepare a Spill Contingency Plan. The Spill Contingency Plan must identify and describe:

1. The type and approximate quantities of drycleaning solvent routinely present at the facility; including a facility layout map denoting the normal locations of solvents within the facility;
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.

~~(h)~~(c) Solvent Delivery and Removal Systems

1. Solvent Delivery. 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 is~~ allowed. ~~Delivery~~ The drycleaning facility's holder of the certificate in subparagraph (h) of this paragraph shall be present and adequately monitor the delivery

of drycleaning solvents ~~shall be adequately monitored~~ to prevent overfills and spills. ~~Beginning October 15, 2000, dense~~ Dense non-aqueous solvents or products delivered to drycleaning facilities shall be via closed, direct-coupled delivery systems. Light non-aqueous solvents or products shall be pumped from the solvent container directly into the machine to minimize spills.

2. Solvent Removal for Waste Disposal. Removal of drycleaning solvent for disposal shall be conducted in such a manner as to minimize the possibility of spills and releases. The drycleaning facility's holder of the certificate in subparagraph (h) of this paragraph shall be present and adequately monitor the removal of drycleaning solvents. During removal, solvent shall be pumped directly from the machine into containers that meet the requirements of subparagraph (d) of this paragraph. No pouring of drycleaning solvents from open buckets or other similar methods is allowed.
3. Solvent Removal for Transfer. Transfer of solvent shall be conducted in a manner as to minimize the possibility of spills and releases. The drycleaning facility's holder of the certificate in subparagraph (h) of this paragraph shall be present and adequately monitor the transfer. During removal, solvent shall be pumped directly from the machine into either another drycleaning machine or containers that meet the requirements of subparagraph (d) of this paragraph. No pouring of drycleaning solvents from open buckets or other similar methods is allowed. The solvent in the containers shall be delivered to the receiving machine by pumping the solvent directly from the container into the receiving machine.

~~(b)(d)~~ 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 containing drycleaning solvent, or waste containing drycleaning solvent in a location or manner where ~~such substances~~ the solvent, material, or waste, 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~~ groundwater, or surface water. ~~Activities which are not allowed include, but are not limited to, the following~~ At a minimum, no person shall:
 - (i) ~~No person shall dispose~~ 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~~ 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~~ 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~~ groundwater, or surface water;
 - (iv) ~~No person shall pump~~ 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~~ or fail to ensure that the visible pipes or lines transporting drycleaning solvent or waste containing drycleaning solvent are placed in a trench sealed with a material impervious to PCE or the appropriate solvent(s) in use at the facility; and
 - (v) ~~No person shall store~~ 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 or without providing~~ upgrading and release detection in the same manner as required for petroleum stored in petroleum underground storage tanks ~~in~~ subject to Chapter 0400-18-01, except ~~deferrals the partial exclusions~~ listed in subparagraph (1)(b) of Rule 0400-18-01-.01 shall not apply.

2. ~~Any~~ Regardless of the drycleaning facility's amount of solvent consumption or quantity of waste generation, 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 shipped off-site by 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 designated facility, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, or to a facility otherwise authorized to receive the hazardous waste.~~ A copy of all hazardous waste, ~~and~~ hazardous material shipping manifests, ~~and bills of lading~~ 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 a~~ facility authorized by the Commissioner, EPA, or another state to manage this waste, 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. Waste shall be stored in labeled containers that are in good conditions with tightly fitting lids so as to minimize the possibility of a release. The container may be constructed of steel, plastic, or fiberglass. Containers must be packaged, labeled, and marked in accordance with federal Department of Transportation regulations and requirements. Waste containers shall be located in a non-high-traffic area of the facility and in an area that is not easily accessible to the general public. Waste containers shall be placed in secondary containment in accordance with subparagraph (f) of this paragraph.~~
5. ~~Drycleaners are allowed to use evaporators or distillation units specifically designed to treat wastewater from drycleaning machines. Only units specifically designed to treat drycleaning solvents may be used, and the unit must be operated at all times in accordance with the manufacturer's specifications and in accordance with all other federal, state, and local laws and regulations. Used equipment filters shall be properly managed in accordance with this subparagraph.~~

~~(e)~~(e) Materials Storage

1. Solvent and solvent-containing materials such as spotting agents 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~~ shall be located in a non high-traffic area of the facility and in an area that is not easily accessible to the general public. Containers shall be stored in secondary containment in accordance with subparagraph (f) of this paragraph. Containers of drycleaning solvent shall be handled with sufficient care to prevent damage to the containers or releases to the environment.
2. ~~Material~~ Safety Data Sheets or equivalent documentation for the drycleaning solvents that may be used at the facility shall be kept at the facility and available to the Department upon request.

(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. Facilities using dense solvent shall have a metal can under all drycleaning units and drycleaning machines.
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~~ must be impervious to and not allow the transmission of drycleaning solvent.
5. The secondary containment units used for product and waste storage shall be constructed of steel or polyethylene and provide adequate leak protection to prevent spills and releases from reaching the environment.

~~(d)~~(g) 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 that there has been a release of seven gallons or more of solvent or solvent-containing material, then the facility shall take appropriate action to stop the release and contain the spilled solvent action to stop the release and contain the spilled solvent or solvent-containing material within ~~twenty-four (24)~~ hours after discovery of the ~~danger release~~ and shall notify the Department of ~~said actions~~ the release and the actions taken.

~~(e)~~(h) Certification

~~Effective October 15, 2007, each~~ 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 Drycleaning & Laundry Institute or its successor,~~ or has a certification deemed equivalent by the ~~Board Commissioner~~ 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. A certified person shall be onsite at all times the drycleaning machine is in operation; at any time the machine is being inspected, maintained, or repaired; and at any time solvent or filters are added or removed from the drycleaning machine.

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

To prevent the possible migration of solvents into soil, ~~ground-water~~ groundwater, 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 sufficiently sealed to prevent migration.

(j) Facility Closure

- ~~4.1.~~ If a drycleaning facility is to be closed or remain out of operation as a drycleaning facility, or if a drycleaning machine is not used, for 90 days or more, solvent and solvent-containing materials, including all drycleaning waste, are to shall be properly removed

from the facility and the machine. Within 90 days of ceasing operation, all solvent and waste, including filters, must be disposed of according to regulations. Solvent will be pumped from the machine either directly into another machine or into containers for transport or disposal. Solvent removal pumping activity shall be properly monitored by the facility's certificate holder.

2. At least 10 days before removing the solvent or solvent-containing materials from the facility, the drycleaning facility shall notify DCERP in writing and obtain approval from DCERP.

3. Within 30 days of removing the solvent and solvent-containing materials from the facility in accordance with part 1 of this subparagraph, the drycleaning facility shall send a notification to the Commissioner, on forms provided by the Commissioner, certifying when and how the facility was closed. Manifests and other documentation showing the disposition of the solvent, solvent-containing materials, and waste shall be submitted with the letter.

(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 or equivalent documentation 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~~ five 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 facility, 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. If it becomes reasonably apparent that there has been a release of seven gallons or more of solvent or solvent-containing material, then the facility shall take appropriate action to stop the release and contain the spilled solvent or solvent-containing material within 24 hours after discovery of the release and shall notify the Department of the release and the actions taken.

(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~~ groundwater 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 sufficiently sealed to prevent migration.

(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~~ Dense non-aqueous solvents or products delivered to drycleaning facilities shall be via closed, direct-coupled delivery systems. Light non-aqueous solvents or products shall be delivered to drycleaning facilities via pumping from the solvent container directly

into the machine from containers that meet the requirements of the federal Department of Transportation.

~~(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 DCERF 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.

0400-15-03-.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 DCERF.

- (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 DCERF eligible regardless of compliance with this rule, in accordance with subparagraph (3)(c) of Rule 0400-15-03-.08.

- (2) Application for Entry into the Program DCERP

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

- (b) An application must be submitted by the applicant to the Department Commissioner in a format determined by the Department Commissioner. 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, and that the facility is not included in a site that has been accepted into the voluntary cleanup oversight and assistance program pursuant to T.C.A. § 68-212-224.

2. For both active and abandoned facilities, any known past recorded incidents of noncompliance shall be referenced in the application (for example, any previous inspection letters or orders from the Department (any Division) or a local Department of Health that documented violations). If the facility is active, the application shall also contain verification that the facility is in compliance with the BMP in Rule 0400-15-03-.04.

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

3.4. 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 Commissioner'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 DCERF reimbursement under the program DCERP and the applicant's point of contact concerning the application.

4.5. 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 DCERF eligibility. The applicants shall designate the person who will receive Fund DCERF reimbursement under the program DCERP and the applicant's point of contact concerning the application.

5.6. 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.

~~6.7.~~ Any other information requested by the Department Commissioner.

- (c) The Department Commissioner 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 in the DCERF, and after receipt and evaluation of a complete application, the Department Commissioner shall notify the applicant to proceed with a facility inspection if the site is an active facility. The Department Commissioner may also require a facility inspection of an abandoned facility. Based on the applicant's Fund DCERF eligibility certification in the application, the facility inspection shall preliminarily be considered a Fund DCERF eligible expense, subject to the appropriate deductible.

(3) Facility Inspection

If a facility inspection is required by the Department Commissioner, the applicant applicant's DCAC 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 Commissioner. 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 Commissioner. The applicant shall submit a facility inspection report to the Department Commissioner in a format and according to a schedule determined by the Department Commissioner. 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 Commissioner shall notify in writing all applicants of its determination on acceptance ~~of the site~~ into the program DCERP and Fund DCERF eligibility. If the site facility is denied entry into the program DCERP or Fund DCERF 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~~ The applicant ~~to~~ does not 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~~ The facility ~~to~~ does not meet the definition of an abandoned or active drycleaning facility, or in-state wholesale distribution facility, or the facility is ineligible pursuant to T.C.A. 68-217-107(c);
3. ~~Of Failure of~~ an abandoned or active drycleaning facility, or in-state wholesale distribution facility to ~~register~~ have been registered during any active operations after June 13, 1995;
4. ~~To Failure to~~ pay all applicable registration fees, penalties, and interest;
5. ~~To Failure to~~ pay all applicable surcharges and penalties;
6. ~~To Failure to~~ implement applicable BMPs at a drycleaning facility, or in-state wholesale distribution facility;
7. ~~To Failure to~~ conduct an appropriate facility inspection; ~~or~~
8. Failure to comply with the proper facility closure procedures in accordance with this rule;
9. The facility is included in a site that has been accepted into the Department's voluntary cleanup oversight and assistance program pursuant to T.C.A. § 68-212-224;

10. The facility has already accrued costs or is subject to a pending or final enforcement action pursuant to the Hazardous Waste Management Acts of 1977 or 1983, Title 68, Chapter 212, or any other Department Division, section, or program; or

8.11. To Failure to comply with other requirements of ~~these rules and this chapter~~ or 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 0400-15-03-.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, or other Department costs have not been paid, the site facility will not be accepted into the program DCERP and will not be eligible for reimbursement of response costs other than the initial facility inspection until all money owed has been paid.~~

4.(c) If the Department's records reveal that applicable BMPs have not been implemented, the facility operator will not be accepted into the program DCERP and will not be eligible for reimbursement of response costs other than the initial facility inspection. ~~Except as provided in paragraph (7) of Rule 0400-15-03-.04, If~~ the facility operator will corrects any deficiencies, the operator may be accepted into the program DCERP and will may be eligible for fund reimbursement ~~after correcting any such deficiencies for any releases that the operator can demonstrate, to the satisfaction of the Commissioner, to have occurred after the date the deficiencies were corrected.~~ 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 DCERF reimbursable.

5.(d) Real Property Owner as Impacted Third Party

~~(i)1.~~ 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)(i)~~ Such party:

~~1.(I)~~ Had actual knowledge of the operator's failure to implement BMPs prior to the release, and

~~1.(II)~~ Failed to notify the Department of such operator's failure within ~~sixty (60)~~ days of such knowledge; or

~~(i)(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)2.~~ Notwithstanding compliance with the provisions of subpart (i) of this part, where the facility inspection or other documentation or investigation 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 DCERF reimbursement:

~~(I)~~(i) The site must be an abandoned facility; or

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

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

~~(iii)~~3. Eligibility for Fund DCERF 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.

6.4. 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 Commissioner 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~~ apply for the DCERF 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 DCERP and corrects the deficiencies, the Department Commissioner 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 DCERF 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 Hazardous Waste Remedial Action Fund.

~~7~~(e) If any deficiencies are either uncorrectable or not corrected within a time frame specified by the Department Commissioner, the applicant ~~will~~ may be denied Fund DCERF access. If Fund DCERF access is denied, the applicant shall have ~~thirty (30)~~ days from the Department's Commissioner's mailing of the notice to appeal the denial to the Board Commissioner. If the Board Commissioner upholds the denial of Fund DCERF access, or if an appeal is not made within ~~thirty (30)~~ days, the Department Commissioner may revoke the operator's Certificate of Registration pursuant to Rule 0400-15-03-10, notify solvent suppliers wholesale distributors 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 DCERF eligibility, the applicant shall perform a prioritization investigation according to a format established by the Department Commissioner. 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 Commissioner. Subject to the availability of DCERP funds in the DCERF, approval of the work plan, cost proposal, and approval of the proposed schedule, the Department Commissioner 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 Commissioner. Following the prioritization investigation, the applicant shall submit the results of the prioritization investigation to the Department Commissioner according to a schedule and in a format determined by the Department's Commissioner. The applicant may perform activities in addition to work requested by the Department Commissioner at the prioritization investigation stage; however, only activities ~~required by Department guidance or~~ specifically pre-approved by the Department Commissioner shall be Fund DCERF eligible expenses for the prioritization investigation. If additional activities are performed, results of the additional work shall be submitted to the Department Commissioner

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 Commissioner, the Department Commissioner shall evaluate all pertinent information and make a determination for further investigation and remediation of any release of drycleaning solvent. At the Department's Commissioner's discretion, a prioritization investigation may also be performed by the Department Commissioner.
- (6) Prioritization for Further Investigation or Interim Action
- (a) The Department Commissioner 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 in the DCERF, additional activities will be approved at sites in accordance with the priority ranking schedule.
 - (c) At all stages within ~~this program~~ the DCERP, 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 DCERP are at any time subject to reprioritization by the Department Commissioner based upon the receipt of additional data that may affect the prioritization determination.
- (7) Implementation of Interim Action or Solvent Impact Assessments Actions
- (a) Interim Action
 - 1. The Department Commissioner shall notify the applicant of the Department's Commissioner's determination of the need for interim action within ~~sixty (60)~~ days of receiving a complete prioritization investigation. Subject to the availability of funds in the DCERF, the Department Commissioner 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 Commissioner according to the schedule and in the format required by the Department Commissioner. The applicant shall make any changes to the work plan, cost proposal, or schedule of implementation required by the Department Commissioner.
 - 2. Subject to the availability of funds in the DCERF, approval of the work plan, approval of the cost proposal, and approval of the proposed schedule, the Department Commissioner 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 Commissioner. The DCERP Board Commissioner may declare the site facility ineligible for reimbursement if the interim action is not performed in accordance with the schedule and work plan requested by the Department Commissioner.
 - 3. Following the interim action, the applicant shall submit the interim action report to the Department Commissioner according to a schedule and in a format determined by the Department Commissioner. If the applicant or the Department Commissioner performed interim action at the site, then the site will be re-prioritized for investigation.
 - (b) Solvent Impact Assessments
 - 1. The Department Commissioner shall notify the applicant of the Department's Commissioner's determination of the need for a solvent impact assessment within ~~sixty (60)~~ days of receiving a complete prioritization investigation. Subject to the availability of funds in the DCERF, the Department Commissioner 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 Commissioner for approval according to the schedule and in the format required by the Department Commissioner. The applicant shall make any changes to the work plan, cost proposal, or schedule of implementation required by the Department Commissioner.

2. Subject to the availability of funds in the DCERF, approval of the work plan, approval of the cost proposal, and approval of the proposed schedule, the Department Commissioner 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 Commissioner. Following the investigation, the applicant shall submit the solvent impact assessment report to the Department Commissioner according to a schedule and in a format determined by the Department Commissioner.
3. Subject to subparagraph (6)(g) of Rule 0400-15-03-.08 minor adjustments in the approved work plan, as required based on field or subsurface conditions, do not require approval by the Department Commissioner.

(c) Supplemental Investigations

1. If the Department Commissioner 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 Commissioner according to the schedule and in the format requested by the Department Commissioner. The applicant shall make any changes to the work plan, cost proposal, or schedule of implementation required by the Department Commissioner.
2. Subject to the availability of DCERP funds in the DCERF, approval of the work plan, approval of the cost proposal, and approval of the proposed schedule, the Department Commissioner 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 report to the Department Commissioner according to a schedule and in the format requested by the Department Commissioner.

(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 Commissioner.

(8) Remedial Alternatives Study

If requested in writing by the Department Commissioner following the Department's Commissioner's review of the investigation report, the applicant shall submit a remedial alternatives study report to the Department Commissioner according to a schedule and in a format requested by the Department Commissioner. 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 Commissioner 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)(b)~~ At all stages within ~~this program~~ DCERP 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)(c)~~ Subject to the availability of DCERP funds in the DCERF, 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 in the DCERF, the site ranking, and the remediation required, the Department Commissioner 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 Commissioner. Subject to the availability of funds in the DCERF, approval of the work plan, approval of the cost proposal, and approval of the proposed schedule of implementation, the Department Commissioner 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 Commissioner.

The DCERP Board Commissioner 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 Commissioner.

(b) Following the implementation of the approved work plan, the applicant shall submit to the Department Commissioner a remediation report containing a description of the activities undertaken during the remediation, observations made, sampling results, and other information requested by the Department Commissioner according to a schedule and format determined by the Department Commissioner. If the remediation will require long term operation and maintenance (O&M) 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 Commissioner and submit the O&M or monitoring plan to the Department Commissioner. The applicant shall make any changes or modifications to the plan required by the Department Commissioner. The applicant shall implement the O&M or monitoring plan as approved.

(11) Completion Response Complete Letter

After all required interim action, investigation, remediation, or other required activities are completed at the site, a completion Response Complete letter shall be issued to the applicant by the Department Commissioner. Following issuance of ~~the completion this~~ letter and reimbursement of all authorized costs, the site shall return to non-Fund non- DCERF eligible status and, ~~unless otherwise approved by the Board,~~ the applicant may no longer receive Fund DCERF reimbursements without reapplying for Fund DCERF eligibility. Nothing in this paragraph shall prevent the Department Commissioner from issuing an interim status letter while O&M or monitoring at a site is ongoing, or from continuing Fund DCERF 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 DCERP may provide oversight of registered facilities requesting review, ~~which that~~ will not be seeking Fund DCERF reimbursement. Prior to issuance of a Response Complete Letter, the program DCERP will ensure that the investigative and remedial activities were comparable to sites participating in ~~the program DCERP~~ for reimbursement of environmental response activities and that to the extent practicable were consistent with program regulations the requirements of this chapter. The requester shall submit a written request to the program Commissioner for ~~review/~~ review or 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, DCERF;~~ and that all pertinent ~~documents/~~ documents and reports have been submitted to the program Commissioner. The requestor shall pay a program oversight fee of \$5,000.
- (b) The program Commissioner may provide oversight of unregistered facilities requesting reviews, ~~which that~~ will not be seeking Fund DCERF reimbursement. The program Commissioner may deny any request for a review that is not reasonable or cost effective. Prior to issuance of a Response Complete Letter, the program DCERP will ensure that the investigative and remedial activities were comparable to sites participating in the program DCERP for reimbursement of environmental response activities and that to the extent practicable were consistent with program regulations the requirements of this chapter. The requester shall submit a written request to the program DCERP for ~~review/~~ review or oversight and shall include an acknowledgement that costs expended will not be eligible for reimbursement from the ~~Drycleaner Fund DCERF~~ and shall submit all pertinent documents ~~/ and~~ reports related to environmental activity at the site. ~~In addition the~~ The requester shall pay a program oversight fee of \$5,000.
- (c) Notwithstanding the request for and provision of oversight under the program DCERP pursuant to either subparagraph (a) or (b) of this paragraph, any applicant may apply for entry of a facility in the program DCERP in accordance with this rule and proceed to comply with the requirements ~~there under of this rule;~~ provided, that any costs incurred under oversight pursuant to subparagraphs (a) or (b) of this paragraph shall not be reimbursable from the program Fund DCERF. ~~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. §§ 68-217-101 et seq. and 4-5-201 et seq.

0400-15-03-.06 Withdrawing an Applicant's Grant of Approval.

- (1) The Department Commissioner may withdraw any favorable determination concerning any application for entry into the program DCERP previously granted if ~~it~~ the Commissioner determines that the applicant is in willful noncompliance with the provisions of the Act or ~~these rules without giving an opportunity to cure this chapter~~. 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 DCERP; ~~or~~
- (b) The applicant's failure to timely adopt, install, or maintain ~~an any~~ 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 Commissioner~~; or any other such ~~intentional~~ actions taken by the applicant which ~~significantly~~ impedes the ~~Department's Commissioner's~~ ability to properly evaluate the site ~~and/or~~ determine appropriate response actions for ~~that the~~ site;

~~(d) The Commissioner receives new information that demonstrates the applicant was not or is not now eligible for entry into the DCERP; or~~

~~(e) The applicant's failure to timely pay its DCAC or complete approved work.~~

(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~~ an order pursuant to Rule 0400-15-03-.10. ~~Said order~~ The order shall include a statement of the facts constituting the alleged violations. The ~~Commissioner's Order~~ order may also provide for the immediate suspension of reimbursement payments from the ~~Fund DCERF~~ and for the return of any ~~Fund DCERF~~ payments made to any person that was ineligible at the time of receipt of ~~said the~~ funds from the DCERF. Known impacted third parties shall also be sent notice of the withdrawal of approval by the ~~Department Commissioner~~. Notice to impacted third parties shall be sufficient if written notice is provided to any lessor of real property, known to the ~~Department Commissioner~~, 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 Commissioner~~, who owns or leases property that is known or suspected by the ~~Department Commissioner~~ 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.~~

~~(5)(3)~~ The ~~Department Commissioner~~ may, through an order issued pursuant to Rule 0400-15-03-.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 Commissioner~~ of a material misrepresentation in another ~~eligible~~ party's petition within its knowledge or acquiesces in such failure.

~~(3)(4)~~ 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 0400-15-03-.10. The recipient of the order shall provide a copy of ~~said the~~ 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 DCERF~~ payments by the ~~Department Commissioner~~ shall remain in effect pending any appeal of ~~a Commissioner's Order~~ an order.

(b) Should the recipient of the order and the ~~Department Commissioner~~ 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 as soon as practicable~~.

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

~~(4)(5) Except as provided in paragraph (5) of this rule, if~~ If a person becomes ineligible for ~~Fund DCERF~~

reimbursement because of conduct occurring after the granting of the petition for entry into the program DCERP, another applicant may only obtain reimbursement from the Fund DCERF for the site only so long as all requirements for the site, including the payment of registration fees, surcharges, and penalties thereon are met.

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

0400-15-03-.07 Reserved ~~for Cleanup Goals / Cleanup Actions.~~

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

0400-15-03-.08 Administrative Guidelines for the Tennessee Drycleaner Environmental Response Fund.

(1) Fund DCERF Obligations

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

1. Available monies in the Fund DCERF 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 from the DCERF will be obligated according to the chronological order in which the complete application for entry into the program DCERP was received.
2. Available monies in the Fund DCERF shall be specifically designated for response activities as such activities are approved and authorized for implementation by the Department Commissioner.

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

1. The applicant has petitioned the Board Commissioner for entry into the program DCERP, has complied with all requirements for entry into the program DCERP, and has been accepted into the DCERP by the Board Commissioner.
2. A reimbursement request is received, according to a schedule and format determined by the Department Commissioner, for response costs associated with a release of drycleaning solvent for which the Department Commissioner has authorized the work related to such response costs, subject to a determination by the Department Commissioner that the costs are reasonable and ~~or~~ consistent with the related work plan and cost proposal authorized by the Department Commissioner.

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

1. In the event that an applicant, ~~for any reason with Commissioner approval~~, undertakes actions which are reimbursable under the Act after entry into the DCERP program but before Fund DCERF 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 this chapter~~. Funds from the DCERF 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 this chapter~~ shall be eligible for reimbursement according to the law, ~~regulations this chapter~~, and guidance in effect at the time the activities were performed. Applicants performing activities under this subparagraph must meet all requirements for fund DCERF eligibility applicable at the time the activities are performed in order to receive future reimbursement.
3. Only work plans and cost ~~proposals estimates~~ approved in writing by the DCERP staff Commissioner after ~~the effective date of these rules~~ October 15, 1997 are applicable for reimbursement.

- (d) All claims against the Fund DCERF are obligations of the Fund DCERF 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 DCERF. 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 DCERF.

(2) Scope of Fund Coverage

- (a) The Fund DCERF will provide reimbursement for the reasonable cost of Department Commissioner-authorized inspection, investigation, and remediation, exclusive of interest, at sites accepted into the program DCERP. All costs consistent with cost proposals estimates approved by the Department Commissioner 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 Commissioner:
 - 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 The deductible shall be 10% per reimbursement with a maximum deductible of \$50,000.
 - ~~3.2.~~ An impacted third party's deductible is the same as the facility for which fund DCERF coverage is sought.
 - ~~3.~~ For facilities/sites that re-enter DCERP for any reason, the facility is required to meet a new deductible.

(3) Authorized Disbursements from the Fund DCERF

- (a) Whenever the Commissioner determines a release has occurred at an eligible site, the Department Commissioner shall, subject to the provisions of ~~these rules this chapter~~ including site prioritization, disburse monies available in the Fund DCERF 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 may be funded by either the DCERF or the Hazardous Waste Remedial Action Fund, as defined in paragraph (1) of Rule 0400-15-01-.02, at the Commissioner's discretion. ~~the costs~~ Costs of any such response actions from the Hazardous Waste Remedial Action Fund may be reimbursed from the Fund, DCERF with the ~~Board's~~ Commissioner's approval.
- (c) The costs for reasonable initial abatement and site stabilization activities are Fund DCERF eligible, up to \$5,000 and subject to applicable deductibles, without submission and prior Department Commissioner 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~~ facility inspection required by the Department Commissioner pursuant to paragraph (3) of Rule 0400-15-03-.05 are eligible for

reimbursement, regardless of whether the ~~Facility Inspection~~ facility inspection determines that the site is eligible or ineligible for further reimbursement.

- (e) Costs incurred by the ~~Department Commissioner~~ in the administration of the Act and ~~these rules this chapter~~ shall be charged to the ~~Fund DCERF~~.
 - (f) The ~~Fund DCERF~~ 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 DCERF~~ for:
 - 1. Hiring consultants and personnel;
 - 2. Purchase, lease, or rental of necessary equipment;
 - 3. Conducting ~~Interim Actions~~ interim actions; and,
 - 4. Other necessary expenses.
- (4) ~~Fund DCERF~~ 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)(a)~~ The ~~Department Commissioner~~ shall not authorize distribution of monies from the ~~Fund DCERF~~ that would result in a diminution of the ~~Fund DCERF~~ 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.
 - ~~(e)(b)~~ The ~~Department Commissioner~~ shall not authorize distribution of ~~Fund DCERF~~ monies as specified in T.C.A. § 68-217-107~~(d)(c)~~.
 - ~~(d)(c)~~ The ~~Department Commissioner~~ shall not authorize distribution of ~~Fund DCERF~~ monies for response actions not undertaken in accordance with ~~the regulations this chapter~~ and guidance established by the ~~Board Commissioner~~.
 - ~~(e)(d)~~ Monies held in the ~~Fund DCERF~~ shall not be used to reimburse costs incurred by owners or operators of facilities in conducting repairs, retro-fits, building or equipment improvements, building renovations or remodels, or the implementation of best management practices.
 - ~~(f)(e)~~ The ~~Fund DCERF~~ 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 this chapter~~; 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 this chapter~~, 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 this chapter~~. In addition, the ~~Fund DCERF~~ shall not be used for the landscaping of sites but shall only be used to restore those portions of the site affected by ~~Fund DCERF~~ approved activities to a safe condition. Finally, the ~~Fund DCERF~~ 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 this chapter~~.
 - ~~(g)(f)~~ The ~~Fund DCERF~~ shall not be obligated and shall not pay out any funds for costs in which there was no prior written ~~DCERP Commissioner~~ authorization or which were incurred prior to ~~the effective date of these rules October 15, 1997~~.

~~(h)(g)~~ Monies held in the Fund DCERF shall not be used to reimburse owners or operators of facilities conducting investigative or remedial activities under paragraph (12) of Rule 0400-15-03-.05.

(5) Maintaining Fund DCERF Eligibility

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

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

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

(c) ~~Adequate~~ The following records ~~shall be~~ are maintained on-site or at a readily available alternative site and made available to the Department Commissioner 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)(ii)~~ Waste disposal manifests;

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

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

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-(d)~~ Unless the Department Commissioner instructs otherwise, all records required to be maintained by ~~this~~ subparagraph (c) of this paragraph shall be are retained for ~~three~~ five years after:

~~(i)1.~~ The ~~issuance of a certificate of completion of~~ Commissioner issues a letter that states all necessary investigation and remedial work has been completed or ~~further~~ that no investigation and remediation is necessary with respect to a site (a Response Complete Summary); or

~~(i)2.~~ Ownership and all records pertaining thereto are transferred to a new owner.

~~(d)(e)~~ After being accepted into the DCERP, ~~report to~~ the DCERP applicant shall promptly notify the Commissioner of any solvent releases which may impact the investigation or remediation of the site.

(6) Requirements for Fund DCERF Reimbursement of Response Costs

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

- (a) Applicants must:
1. ~~perform~~ Perform initial response actions in accordance with paragraphs (5) and (7) of Rule 0400-15-03-04 0400-15-03-05 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)2.~~ Applicants must select Select a contractor person from the Department's Drycleaner Approved Contractor (DCAC) list. ~~The Department must be notified and notify the Commissioner~~ in writing of such a selection within ~~thirty (30)~~ days or other time specified by the ~~Department. Commissioner; and~~
 3. A Within 30 days, establish a contractual agreement ~~must be established~~ between the potentially eligible party and the contractor DCAC. ~~The Department must be provided and provide~~ a letter signed by both parties confirming that a contractual relationship exists for environmental response actions.
- ~~(e)(b)~~ Following completion of necessary site stabilization actions, the cost estimates for subsequent inspections, investigative investigations, and corrective actions ~~and their cost estimates~~ must be approved by the Department Commissioner in accordance with Rule 0400-15-03-05, and the work performed by DCACs must be approved in accordance with the requirements of ~~these rules~~ Rule 0400-15-03-09. Response actions, other than those identified in subparagraph (a) of this paragraph, performed prior to ~~acceptance of an associated cost proposal~~ the approval of the cost estimates shall not be eligible for reimbursement from the DCERF, unless they were undertaken at the specific direction of the DCERP.
- ~~(d)(c)~~ Upon review of a cost proposal estimates for Fund DCERF eligible activities, the Department Commissioner 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)(d)~~ In addition to the requirements of subparagraph ~~(e)(b)~~ of this paragraph, the Department Commissioner 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 Commissioner in projecting future funding requirements for the DCERF. The estimate shall be updated by the applicant as more complete information regarding a site becomes available.
- ~~(f)(e)~~ Upon acceptance approval of a cost proposal estimate by the Department Commissioner, sufficient monies will be obligated from the DCERF for completion of the particular phase of work along with authorization for the initiation of the proposed action. Payments from the DCERF shall be subject to the availability of funds in the DCERF at the time of acceptance approval by the Department Commissioner.
- ~~(g)(f)~~ The cost of completing any task in an approved work plan that exceeds the amount in the accepted approved cost proposal, estimate may be denied by the Department Commissioner unless:
1. An amended written cost proposal estimate is submitted and approved before the original initially-approved cost proposal estimate is exceeded; or
 2. Oral approval is given by the Department Commissioner and within two working days, and a written amended cost proposal estimate consistent with such oral approval is submitted to the Department Commissioner.
- ~~(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 Requests

- (a) ~~Applications for reimbursement of Reimbursement requests for~~ response costs shall be submitted in a format established by the Department Commissioner 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 Commissioner, or which the applicant may wish to provide.
- (b) The ~~application reimbursement request~~ shall contain the following statement which shall be signed by the applicant and the project manager of the DCAC:

~~4.~~ "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 reimbursement request; and that no charges are presented as part of this application reimbursement request that do not directly relate to the performance of response actions related to the release of solvent at this site. ~~2.~~ Any material I understand that any misrepresentation or omission regarding ~~said application the reimbursement request~~ may be considered willful noncompliance with ~~these regulations this chapter~~ and may serve as a sufficient basis for the Department's Commissioner's denial of the application reimbursement request and future access to Fund DCERF reimbursement."

- (c) If a site has previously been the subject of ~~an application a reimbursement request~~ for Fund DCERF 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 this chapter~~, the burden shall be on the applicant to demonstrate by substantial and material evidence in the application reimbursement request that ~~an application the request~~ does not include actions or expenses for releases that were the subject of ~~applications reimbursement requests~~ that have been previously denied.
- (d) ~~Applications for payment Reimbursement requests~~ 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), the Commissioner recommends that a reimbursement ~~application should request~~ 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 Commissioner may request a status report to be submitted with each ~~application for payment reimbursement request~~. Upon request, the Department Commissioner may approve interim payments at more frequent intervals.
- (e) All payments shall be subject to review for compliance with ~~these rules this chapter~~ by the Department Commissioner. Should a site inspection or other information reveal a discrepancy between work performed and the work addressed by a ~~payment application reimbursement request~~, the Department Commissioner may deny payment or may require the DCERF to be reimbursed for money already disbursed. ~~Denied payments may be appealed to the Commissioner.~~
- (f) Notwithstanding the provision of subparagraph (d) of this paragraph, in order to be eligible for payment from the DCERF, ~~an application for a~~ reimbursement request must be received by the ~~program DCERP~~ 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 DCERP~~ if the reimbursement application request was received on or after May 11th of the current year.

(g) ~~If the Fund reimburses a party for response costs under these rules this chapter for which the owner or operator of a facility has insurance coverage, the DCERF 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. If the owner or operator of a facility has insurance coverage that may cover response costs, the owner or operator must notify the DCERP. The DCERP will not reimburse from the fund for costs that the owner or operator received payment from an insurance carrier or other source.~~

(8) ~~Fund~~ DCERF Payment Procedures

(a) Payments from the DCERF will be made directly to the applicant PEP 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.~~

~~(e)~~(b) The applicant eligible party (EP) is responsible for final payments to the contractor(s) DCAC(s) performing the work including program DCERP deductibles. The applicant EP is responsible for making timely payments to the contractor(s) DCAC(s) in accordance with the contract between the parties.

~~(d)~~(c) ~~The Department shall review applications for payment within ninety (90) days of receipt of a properly completed application. The Department Commissioner shall issue either a letter of application reimbursement approval or a status review letter within ninety (90) days of receipt of an application a properly completed reimbursement request. A status review letter from the Department Commissioner to the applicant EP 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 reimbursement request.~~

If the Commissioner determines that 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 the Commissioner determines that certain costs are ~~considered~~ unreasonable or ineligible for reimbursement, the Department Commissioner shall issue a check for the amount ~~of the application not in question determined to be reasonable and eligible~~, 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 Commissioner 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 this chapter or administrative guidance issued thereunder. Any denial under this subparagraph shall be considered a final agency action interpreting the applicability of these rules that is subject to review under T.C.A. § 4-5-223. To secure review, the PEP must file the petition for declaratory order under T.C.A. § 4-5-223 within 30 days of issuance of the denial.

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

0400-15-03-.09 Contractors.

~~(1)~~ Contractors DCAC(s) are not beneficiaries of ~~this Fund the DCERF~~ and shall have no right of claim against it. ~~And any Any~~ and all claims shall be against the applicant who hired the contractor DCAC. An applicant can assign its rights to reimbursement from the Fund DCERF to its contractor DCAC for reimbursement amounts arising under the contract.

~~(2)~~ Neither an applicant nor the applicant's contractor DCAC shall file false or inaccurate information with the Department Commissioner. Both the applicant and the applicant's contractor DCAC are required to follow the methods and procedures established by the DCERP Commissioner 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 Commissioner in the event that the contractor DCAC ceases to exist.

~~(1)(3)~~ A Drycleaner Approved Contractor ("DCAC") is a shall be a person, or company as defined in Rule 0400-15-03-.02, responsible for conducting and overseeing the inspection, investigation, or remediation of a drycleaner environmental response program (DCERP) site. The Department Commissioner 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 DCACs approved to perform facility inspections, a second category for companies DCACs approved to perform investigative work, and a third category for companies DCACs 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 this chapter 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)(4)~~ A company will person may be approved to perform Fund DCERF eligible work upon satisfaction of satisfying the following:

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

1. Statement of organization, experience, and personnel including the following: (i) Provide the The organizational history of the company including, but not necessarily limited to, person; years in business; location of offices; form of business —sole — (e.g., sole proprietor, partnership, corporation); and a list of officers and principals of the company including their mailing addresses and telephone numbers;

~~(ii)2.~~ Provide a A copy of the organization's latest audited annual financial statement or other approved alternate proof of financial stability;

~~(iii)3.~~ 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 person can have in effect insurance as required in these rules Proof of insurance as required in subparagraph (5)(l) of this rule with the Division of Remediation the Department listed as a certificate holder on the policy(ies) an additional insured;

~~(iv)4.~~ A licensed contractor that is applying If applying to be included in the remediation category, shall attach a copy of the certificate documenting that the company person 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)5.~~ Prepare a A detailed organizational chart showing only the employee names and titles that will perform work under the DCERP, Describe a description of the project organization relating to staff that will perform work under the DCERP, and State an indication of which staff, by job title and location, will perform which services and include each person's job title. Note the location of all staff;

~~(vi)6.~~ Attach a A resume for each person listed on the organizational chart. Organize and submitted as follows:

(i) All resumes must be organized in sections by office location so that it is clear which personnel work from which office. location;

(ii) Resumes shall All resumes must include, at a minimum, include the following information:

(l) Description A 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~~ The current position, title, and applicable licenses and registrations which the person holds. ~~If For example, 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~~ 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 and describe the activities and duties performed by the employee, such as~~ 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)~~ 7. A description of the person's DCAC Experience Requirements that includes the following:

- ~~(i)~~ (i) If the company person desires to be approved to perform facility inspections, ~~provide~~ descriptions of a minimum of three ~~(3)~~ different facility inspections or facility audits performed by the current company person's staff during the past ~~five (5)~~ three years at facilities which use or have on-site dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs);
- ~~(ii)~~ (ii) If the company person 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 or groundwater~~, which current company staff has performed in the past three years;
- ~~(iii)~~ (iii) If the company person 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 groundwater~~ 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 estimates~~ 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 Commissioner; designing, conducting, evaluating, and monitoring full-scale remediation site work; and implementing full-scale plans of remediation;
- ~~(iv)~~ (iv) If a company person 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; ~~and~~
- ~~(v)~~ (v) In these descriptions, state the duties performed, type of facility inspected, ~~of~~ contaminants investigated or remediated, results of the inspection, investigation or remediation, and other pertinent information which would show the company's person'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).

(I) Only include sites worked by personnel who will work on DCERP sites.

(II) Indicate the personnel who performed the inspection, investigation, or remediation, and describe their job duties. Limit and limit the discussion to two (2) typed pages per site per category;

~~(viii)8.~~ ~~Attach letters~~ Letters of recommendation for two (2) sites described ~~above in part 7 of this subparagraph~~ from clients describing the ~~company's facility person's~~:

~~(i)~~ If the person is applying to be approved for drycleaner inspection activities, facility inspection or facility audit activities at the site and the clients' opinions of the quality of work performed by company's the person's personnel if the company is applying to be approved for drycleaner inspection activities.;

~~(ii)~~ Attach letters of recommendation for two (2) sites described above from clients describing the company's investigation If the person is applying to be approved for investigation activities, investigation activities at the site and the clients' opinions of the quality of work performed by company's the person's personnel if the company is applying to be approved for investigation activities.; and/or

~~(iii)~~ Attach letters of recommendation for two (2) sites described above from clients describing the company's remediation If the person is applying to be approved for remedial activities, remediation activities at the site and the clients' opinions of the quality of work performed by company's the person's personnel if the company is applying to be approved for remediation activities.;

(Note: If letters of recommendation are unavailable, other approved forms of verification can be substituted at the Commissioner's discretion.); and

~~(ix)9.~~ If the ~~company person~~, its officers, its principals, or any of the employees referenced in ~~subpart (i) or (vi) of this part subparagraph~~ 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 a description of the circumstances, including the reason(s) for such action and the response action(s) taken by the ~~company person~~ to assure there will not be similar problems in the future; and

2-10. A notarized statement, sworn by an executive officer or principal of the ~~company person~~ including the following provisions:

(i) Neither the ~~company person~~ nor any of the ~~company's person'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 person nor any of the company's person'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) Neither the person nor any of the person's principals, officers, and employees has been found guilty in a court of competent jurisdiction of falsification of data or issuing fraudulent invoices.

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

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

(b) DCAC Registration Fee

1. A non-refundable registration fee of five hundred dollars (\$500) shall be submitted with the application if the company person is applying to be in one category of the DCAC list, and a A non-refundable fee of seven hundred fifty dollars (\$750) shall be submitted if the company person is applying to be in more than one category on the DCAC list.
2. A company person 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 person may submit a separate DCAC application for each office location. Should one office location be disqualified under this program by the Commissioner from being a DCAC, any other offices that were included in a multiple-office DCAC application package under one registration fee would then be disqualified from the being a DCAC program.

(c) Companies which A person who satisfactorily demonstrate demonstrates to the Department's review committee Commissioner's satisfaction that the company person 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 subparagraphs (a) and (b) of this paragraph shall be included in the next published approved contractor DCAC list in the appropriate category(ies) following receipt by the Department Division of Remediation of the required insurance certificate. For initial evaluation to become a DCAC, it shall be assumed by

the Department Commissioner 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)~~ subparagraph (a) 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 person shall also be required to satisfactorily demonstrate to the Department satisfaction of the Commissioner that the circumstances, including the reason(s) for such actions, have been corrected and will not reoccur. A company person which is not approved as a DCAC may appeal the Department's Commissioner's determination to the Board the Commissioner; however, the appeal must be filed within ~~thirty (30)~~ days of the Department mailing the certified letter notifying company the person 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 Commissioner on the renewal application:
1. List of personnel who will work on DCERP sites in the upcoming year, and for each person's person on the list include the 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 in~~ subparagraph (a) of this paragraph.
 2. A valid insurance certificate showing insurance required ~~in these rules by this chapter~~.
 3. A non-refundable fee of ~~two hundred dollars (\$200)~~ if the company person is renewing as a DCAC in one category and a ~~non-refundable non-refundable~~ fee of ~~three hundred fifty dollars (\$350)~~ if the company person 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)(5)~~ 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 DCERF~~ 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 SUBPARAGRAPH (7)(d) OF RULE 0400-15-03-.08 WHICH ALLOWS APPLICATIONS FOR PAYMENTS TO BE SUBMITTED SIXTY (60) DAYS FOLLOWING INITIATION OF WORK AND AT SIXTY (60) DAY INTERVALS THEREAFTER. IN ADDITION, SUBPARAGRAPH (7)(f) OF RULE 0400-15-03-.08 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.~~

"[DCAC 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 expenses incurred in the investigation and/or cleanup of this site. On behalf of [Applicant's Name], [DCAC Name] will prepare and submit timely reimbursement applications in accordance with Chapter 0400-15-03, including subparagraph (7)(d) of Rule 0400-15-03-.08.

On behalf of [Applicant's Name], [Company's Name] will prepare and submit timely reimbursement applications in accordance with DCERP rules including subparagraph (7)(d) of Rule 0400-15-03-.08 which allows applications for payment to be submitted 60 days following initiation of work and at 60 day intervals thereafter in addition, subparagraph (7)(f) of Rule 0400-15-03-.08 requires that 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.

- (e) The ~~DCACs~~ DCAC's 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 this chapter and gather and maintain documentation and records necessary or required for supporting and filing claims with the DCERP Fund.~~
- ~~(g)~~ For at least five years after response actions have been completed for a site, the DCAC shall keep and preserve:
 - 1. Detailed records that demonstrate compliance with approved investigative and response action plans; and
 - 2. All invoices and financial records associated with costs for which reimbursement is or will be requested.
- ~~(g)~~(h) 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~~ Commissioner.
- ~~(h)~~(i) Unless otherwise specifically approved by the ~~Department~~ Commissioner, 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~~ Commissioner. All plans and reports submitted to the ~~Department~~ Commissioner 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 Commissioner. 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 Commissioner. If the work is not performed according to the above specifications the plan approved by the Commissioner, 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 the DCAC relating to work as an approved contractor.~~

~~(j)~~(l) 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 parts 1 through 6 of this subparagraph~~, or the equivalent. The DCAC shall provide certification, with the Division of Remediation listed as a certificate holder, to the Department Commissioner of such coverage during the initial application process and yearly with the renewal application thereafter, or more frequently as necessary to keep the Department Commissioner 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 and makes the DCAC ineligible for any reimbursements for work performed without insurance coverage. 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 Commissioner's satisfaction. 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 Department.

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 ~~(4)~~ 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~~ 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~~ 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~~ this subparagraph. 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~~ estimates to the DCERP unless the stop work is removed by the ~~Department or the Board~~ Commissioner.

(m) The DCAC shall submit timely annual registration renewal applications as required by subparagraph ~~(2)(d)~~ (4)(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~~ actual or threatened release or exposure pathway, the DCAC shall take such action within ~~twenty-four (24)~~ hours after discovery of the danger and shall provide notice to the applicant and the Commissioner of ~~said~~ the interim 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)(6)~~ 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 in subparagraph (5)(l) of Rule 0400-15-03-09;
- (e) Files an inaccurate ~~drycleaner program Fund~~ DCERF 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 DCERF 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, Commissioner; or any ~~other such~~ intentional actions which significantly impedes the Department's Commissioner'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~~ discipline, 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); or,

7. Fraud.

- (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~~ DCERF, the drycleaner operator, or the impacted third party;
- (l) Files three ~~(3)~~ plans which are rejected by the Department Commissioner as deficient ~~for similar reasons~~ or fails to correct a plan based on comments from the DCERP Commissioner without supplying acceptable explanation to DCERP the Commissioner;
- (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 Commissioner without the approval of the Department Commissioner. 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 4~~ December 31 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 Commissioner;
- (q) Fails to perform activities required in ~~these rules~~ this chapter 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~~ in accordance with this chapter;
- (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 Commissioner; ~~or~~
- (u) Has been found guilty in a court of competent jurisdiction of falsification of data or issuing fraudulent invoices.

~~(6)(7)~~ The process for removing a person 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~~ Commissioner or the Department Commissioner determines the ~~company's~~ person's activities as a DCAC should be evaluated.
- (b) The ~~review committee~~ Commissioner shall inform the company person via certified mail that the

~~company's person's~~ activities as ~~an approved contractor a~~ DCAC under the DCERP are to be reviewed. The ~~company person~~ shall submit to the ~~review committee~~ Commissioner a list of all sites where the company is performing DCERP Fund DCERF eligible work, and the ~~company person~~ shall cooperate with the ~~review committee~~ Commissioner in any and all ways requested by the Department Commissioner. The ~~review committee~~ Commissioner shall perform its investigation and notify the ~~company person~~ of the findings.

- (c) The ~~Department's review committee~~ Commissioner may request the company to appear at a meeting to show cause why the ~~Department~~ Commissioner should not remove the ~~company person~~ from the DCAC list.
 - (d) The ~~company person~~ may request a meeting with the ~~review committee~~ Commissioner.
 - (e) The ~~Department~~ Commissioner shall notify the ~~company person~~ of the ~~review committee's~~ Commissioner's decision by sending a certified letter to the last known address of ~~company person~~ on file with the DCERP. If the ~~review committee~~ Commissioner determines that removal of the ~~company person~~ from the DCAC list is warranted:
 1. The certified letter sent by the ~~Department~~ Commissioner to the ~~company person~~ shall specify a date to terminate work on Fund DCERF eligible sites. After the stop work date no activities performed by the company on any DCERP site shall be Fund DCERF reimbursable unless the company appeals to the ~~Board~~ Commissioner, and the ~~Board~~ Commissioner determines to allow the ~~company person~~ to continue as a DCAC, or the ~~company person~~ reapplies to the ~~Department~~ Commissioner, and is accepted by the ~~Department~~ Commissioner.
 2. The ~~company person~~ shall have ~~thirty (30)~~ days from the ~~Department~~ Commissioner mailing the certified letter notifying the ~~contractor person~~ of removal from the list of ~~approved contractors~~ DCACs to request an appeal ~~to the Board~~. If the ~~company person~~ does not appeal within the required time period, the decision of the ~~review committee~~ Commissioner shall be final. An appeal to the ~~Board~~ Commissioner will stay the removal of the ~~contractor person~~ from the DCAC list. ~~An~~ However, an appeal to the ~~Board~~ Commissioner shall not prohibit the ~~Department~~ Commissioner from terminating or preventing the DCAC from working on DCERP Fund DCERF eligible sites during the appeal process, and any work performed after the termination date and during said termination shall not be Fund DCERF eligible whether or not the ~~company person~~ remains on the DCAC list following appeal.
 3. The ~~Department~~ Commissioner shall notify all sites which the ~~company person~~ identified as Fund DCERF reimbursable sites of the stop work date and that the ~~company's person's~~ work after ~~said the stop work~~ date is not eligible for reimbursement from the DCERP Fund DCERF unless otherwise notified by the ~~Department~~ Commissioner.
 - (f) If a ~~contractor person~~ 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 person~~ is removed from the DCAC list, the ~~company person~~ or a ~~company person~~ with any of its principals or officers can not apply for a period of one ~~(1)~~ year from date of removal. If a ~~company person~~ is removed as a result of conviction of, pled guilty to, or pled nolo contendere to a violation of an environmental law listed in subparagraph ~~(5)(h)~~ ~~(6)(h)~~ of this rule or other violations listed in subparagraph ~~(5)(i)~~ ~~(6)(i)~~ of this rule, the ~~company person~~ 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 person's~~ name or any other entity.
- ~~(7)(8)~~ The DCAC list shall have a category which lists the number of times a ~~company person~~ has been removed from the DCAC list. If a ~~company person~~, its principals, or its officers are removed from the list three ~~(3)~~ times, then the ~~contractor person~~, its principals, and its officers are not eligible to reapply for addition to the DCAC list.
- ~~(8)(9)~~ The initial application, renewal applications, plans and reports, and Fund DCERF 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)~~(10) The appearance of a ~~company person~~ on the DCAC list shall in no way establish liability or responsibility on the part of the ~~Department Commissioner~~, the ~~Fund DCERF~~, or the State of Tennessee in regards to the services provided by the ~~company person~~ 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 DCERP~~.

~~(10)~~(11) 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)~~(12) 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)~~(13) A ~~Drycleaner Approved Contractor (DCAC)~~ may employ the environmental professional labor services of contractors or individuals who are not recognized by ~~this program the Commissioner~~ as a ~~Drycleaner Approved Contractor DCAC~~. 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 Commissioner~~ 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 Commissioner~~ and work conducted and invoiced to the DCERP.

~~(13)~~(14) It is the responsibility of DCACs ~~working in this program~~ to seek written clarification from the DCERP concerning whether ~~DCERP-issued Commissioner-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.

0400-15-03-.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 the~~ 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 0400-15-03-.03 for failure to follow the Best Management Practices in Rule 0400-15-03-.04 or for any other willful noncompliance of the Act~~

~~and this chapter.~~ 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 0400-15-03-06.~~ 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 Commissioner.~~ Any such order shall become final and not subject to review unless a petition is filed within ~~thirty (30) days~~ after its ~~issuance receipt.~~ ~~An additional three (3) days shall be permitted for filing a petition if an order is delivered by certified mail rather than personal service.~~ Any hearing before the Commissioner on any petition filed under this paragraph shall be conducted as a contested case and shall be heard before an administrative judge sitting alone pursuant to T.C.A. §§ 4-5-301(a)(2) and 4-5-314(b).

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

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: June 7, 2021

Signature: _____

Name of Officer: Robin L. Heriges

Title of Officer: Deputy Director, Division of Remediation

Department of State Use Only

Filed with the Department of State on: _____

Tre Hargett
Secretary of State