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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.*

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Remediation
<b>Contact Person:</b>	Robin L. Heriges
<b>Address:</b>	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 14th Floor Nashville, Tennessee 37243
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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:*

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

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

Address 1:	Multimedia Room, 3 <sup>rd</sup> Floor		
Address 2:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date:	12/14/2023		
Hearing Time:	10:00 AM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

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*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 Rachael Maitland at (423) 836-8925 or [tdec.titlevi@tn.gov](mailto:tdec.titlevi@tn.gov) for more information. Si le resulta difícil leer, hablar o entender inglés, TDEC puede proporcionar servicios de traducción o interpretación sin cargo. Comuníquese con Rachael Maitland al (423) 836-8925 o [tdec.titlevi@tn.gov](mailto:tdec.titlevi@tn.gov) para obtener más información.*

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:

- Rule 0400-15-03-.01 changes numbering to ensure uniformity with other rules. It also will allow for electronic reporting. The changes further define investigations at a dry-cleaning facility and compliance with best management practices. Furthermore, the amendments describe the failure to comply with BMPs and the subsequent consequences.
- Rule 0400-15-03-.02 clarifies several of the definitions used in the rule and deletes unused definitions.
- Rule 0400-15-03-.03 adds or further defines requirements for out-of-state distributors, new drycleaning facilities, and current or prior owners/operators of abandoned wholesale distributor facilities.
- Rule 0400-15-03-.04 is amended to require a written spill contingency plan, for which the Department will develop a template. The BMP section also discusses a facility's fund eligibility relating to implementing these best management practices as described in the rules. There are procedures for solvent transfer, solvent removal, and wastewater/waste storage and disposal. Processes for closing a facility and notification to the Department are also delineated. Because paragraphs (5) through (7) of this rule were duplicative, these paragraphs were removed. Paragraph (8) of this rule was removed because the Drycleaners Environmental Response Board was sunset.
- Rule 0400-15-03-.05 adds a requirement for active and abandoned facilities to maintain any known recorded incidents of noncompliance and previous orders from the Department or a local department of health. The amendments also provide descriptions of limitations or disqualifications for access to the DCERF.
- Rule 0400-15-03-.06 clarifies how the Department may withdraw approval from an applicant.
- Rule 0400-15-03-.08 defines certain activities that may not be reimbursed from the fund. Additional language is added to clarify that facility owners/operators in the DCERP are not eligible for DCERF reimbursement for costs already covered by insurance claims proceeds.

- Rule 0400-15-03-.09 brings the language in this rule into conformity with the definitions and clarifies responsibilities for Drycleaner Approved Contractors. Paragraph (4) of this rule was deleted to reflect current practice.
- Rule 0400-15-03-.10 describes enforcement actions that the Department can take related to failure to follow the rules in this chapter.

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, 14<sup>th</sup> Floor, Nashville, Tennessee 37243; telephone (615) 741-4936 or email: [dry.cleaners@tn.gov](mailto:dry.cleaners@tn.gov). However, such written comments must be received by 4:30 PM CDT, December 14, 2023, 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](mailto: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
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) 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.

(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 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 of information 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) 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 best management practice required by Rule 0400-15-03-.04, the operator may not be eligible under the DCERP for reimbursement of response costs or other benefits. Such failure is considered willful noncompliance with this chapter.
- (b) If the Commissioner determines that the owner or operator failed to follow best management practices required by Rule 0400-15-03-.04, then the Commissioner may withdraw DCERP eligibility, withhold a registration renewal, or terminate a facility's registration under the DCERP.

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

0400-15-03-.02 Definitions.

When used in this chapter, the following terms have the meanings given below unless otherwise specified:

"Abandoned drycleaning facility" means any real property premises or individual leasehold space on which a drycleaning facility formerly operated.

"Act" means the "Drycleaner's Environmental Response Act," as amended, T.C.A. §§ 68-217-101 to -113.

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

"Application" means either the act of applying or the form upon which a request is made.

"Best management practices" or "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 waste or releases of chemicals or other pollutants to the environment.

"Chlorofluorocarbon" means one of a group of chemical compounds composed only of carbon, chlorine, fluorine, and hydrogen.

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

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

"Department" means the Department of Environment and Conservation.

"Drycleaner environmental response fund" or "DCERF" refers to the fund established under T.C.A. § 68-217-103.

"Drycleaner environmental response program" or "DCERP" means the program established under T.C.A. §§ 68-217-101 to -113 and this chapter.

"Drycleaner approved contractor" or "DCAC" means a person who has met the qualification requirements set forth in this chapter and has been specifically designated by the Commissioner to be an approved contractor in the DCERP.

"Drycleaning facility" means any commercial facility located in this state that 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.

“Drycleaning operations” means cleaning of apparel and household fabrics, using one or more drycleaning solvents, including, but not limited to, those businesses described in Standard Industrial Classification Code No. 7216.

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

“Facility” means an active or abandoned drycleaning facility or an in-state wholesale distribution facility.

“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.

“Impacted third party” means a lessor of real property on which a drycleaning facility or an in-state wholesale distribution facility is located, a property owner whose real property is adversely environmentally impacted by a release from a drycleaning facility or in-state wholesale distribution facility, or their predecessors, successors or assigns, mortgagees, predecessors-in-title, and successors-in-title.

“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.

“Light non-aqueous solvent or product” means any chemical or mixture of chemicals, other than water-based solvent, that is used in the drycleaning of clothes and that floats on water (in pure form has a specific gravity less than 1.0).

“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.

“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.

“Operation” with respect to a facility means maintaining or management.

“Owner” with respect to a facility, means the person who owns part or all of the real property of the facility.

“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.

“Petition” is synonymous with “application.”

“Potentially eligible party” or “PEP” means an active drycleaning facility owner or operator, current or prior abandoned drycleaner facility owner or operator, in-state wholesale distribution facility owner or operator, or impacted third party who is potentially eligible to participate in the DCERP and the DCERF.

“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 that impacts groundwater, surface water, or soils.

“Site” means the areal extent of contamination and all suitable areas in close proximity to the contamination necessary for the implementation of response actions.

“Wholesale distributor” means a person 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 gross receipts from the sale of drycleaning solvents and supplies to such drycleaning facilities equals or exceeds 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) The purpose of this rule is to establish a system and schedule for registration and collection of fees.
- (2) 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 wholesale distributors who sell, transfer, 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 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 from, the registration form may be deemed willful noncompliance with this chapter and may serve as sufficient basis for the Commissioner’s denial of an application for entry into the DCERP, for revocation or non-renewal of a registration issued in reliance on the submitted registration form, or for a denial or withdrawal of a grant for entry into the 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 implemented.
    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 Commissioner.
    5. Out-of-state wholesale distribution facilities that supply Tennessee drycleaning facilities must be registered with the Department, but are not required to pay the registration fee.
  - (b) Current or prior owners or operators of abandoned drycleaning facilities may register the abandoned drycleaning facility in accordance with T.C.A. § 68-217-106(b). The interest payable shall be in accordance with Article XI, Section 7 of the Constitution of the State of Tennessee.

- (c) 1. Beginning in calendar year 2011, each facility owner or operator shall pay an annual per-facility registration fee as follows:
- (i) Each year the number of active drycleaner facilities will be divided by the 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 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-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 facility owners or operators that use light non-aqueous drycleaning solvent or product and shall be replaced with a registration fee of \$500 per year provided Department records indicate that dense non-aqueous drycleaning solvent or product has never been used at the facility premises or by the operator and provided that the operator will certify to the best of 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 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 owner or operator 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. 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 that the facility uses, the higher fee will apply.
4. 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.
6. The proceeds from all facilities registered in the DCERP shall be deposited into the DCERF.
- (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 registered in the DCERP at least 30 days before the payment of the registration fee is due. Any failure of the Department to do so is not justification to withhold payment of any registration fee and 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 31 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 Department at least two weeks prior to commencing operations. A revised registration form shall be submitted within 30 days of a change in information that requires filing a revised registration. A change in information that 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 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 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 drycleaning or in-state wholesale distribution facility would be, provided the facility is currently operating. If a drycleaning or in-state wholesale distribution facility is not currently operating at the property, the impacted third party would pay the abandoned drycleaning facility registration fee, subject to the provisions of subparagraph (4)(d) of Rule 0400-15-03-.05. This subparagraph does not affect any penalties or other liabilities incurred pursuant to the Act or 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 compliance with the Act and this chapter to the satisfaction of the Department, including but not limited to implementation of 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 DCERF eligibility or compliance with other regulations.
  - (b) Beginning with the calendar year 2001, the certificates will be effective for one year, from January 1 through December 31, unless otherwise terminated under 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 and Non-renewal of Registration
- (a) The Commissioner may issue an order to revoke a facility owner or operator's Certificate of Registration for a drycleaning facility or withhold re-issuance due to violations of the Act or this chapter. Such revocation or non-renewal shall be conducted in accordance with the following procedures:
    1. If the Commissioner determines cause exists and tentatively decides to revoke the authorization to operate, the Commissioner will, pursuant to T.C.A. § 4-5-320, give the person notice by mail of facts or conduct that warrant the intended action and will give the person an opportunity to show compliance with this paragraph;
    2. After completing all requirements of T.C.A. § 4-5-320, the Commissioner will decide whether or not to revoke, or not renew, the authorization to operate by issuing an order to the person; and
    3. The Commissioner's decision to revoke or not to renew the authorization to operate may be appealed as set forth in T.C.A. § 4-5-320(d)(1).
  - (b) The order to revoke or not renew a registration will state the grounds for the decision, 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 Commissioner may notify 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, penalties, and interest; 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 receiving an order, in accordance with subparagraph (a) of this paragraph, may appeal by filing a written petition in accordance with Rule 0400-15-03-.10.
- (6) Solvent Surcharge Fees

- (a) The surcharge fee applies to the purchase or transfer of drycleaning solvent. The surcharge fee is \$15 for each gallon of dense non-aqueous solvent or product and \$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 CO<sub>2</sub>.
- (b) The surcharge fee shall be collected by the wholesale distributor and forwarded with completed 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 received. Both the wholesale distributor's quarterly solvent sales reports and fees and the active drycleaning facility's solvent reports 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
April - June	July 31
July -September	October 31
October - December	January 31

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

- (c) The operator of a drycleaning facility shall purchase solvent from a wholesale distributor that collects surcharge fees. Where a wholesale distributor fails to collect the surcharge fee on a sale of solvent, the owner or operator shall bring to the attention of the wholesale distributor its obligation pursuant to the Act to collect the surcharge fees. If the wholesale distributor still refuses to collect and remit the surcharge fees to the Department, then the owner or operator 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 T.C.A. § 68-217-108 for failure to pay a surcharge fee. This subparagraph does not otherwise affect any penalties or other liabilities incurred by a wholesale distributor pursuant to the Act or this chapter by failing to collect or remit surcharge fees, except that there shall be no double recovery of surcharge fees by the Commissioner.
- (d) A sale or transfer of solvent between owner or operators shall require that the purchasing owner or operator collect the surcharge for remittance to the Department, if a surcharge has not already been collected on the sale or transfer of solvent as part of a prior transaction, and if the purchasing owner or operator is subject to the reporting requirements of subparagraph (b) of this paragraph.
- (e) Every person responsible for collecting or holding surcharges under the Act has the obligation to hold the collected surcharges in trust for the DCERF until the collected surcharges are paid to the DCERF according to the Act and this chapter. The person holding the collected surcharges shall defend and protect, at the person's own expense, 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. The person holding the collected surcharges shall promptly notify the 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 bankruptcy law. All surcharges are the property of the DCERF, and the person has no equitable right or claim to the surcharges. Any use of the surcharges or failure to defend the surcharges from loss or diminishment shall be deemed a violation of the trust relationship and this chapter. The person holding the collected surcharge shall be liable to the 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, 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 DCERF access and the inability to receive 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, penalties, or interest lawfully levied by the Department under 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) Implementation of BMPs is necessary to prevent possible future releases of drycleaning solvents into the environment. A facility owner or operator's failure to implement BMPs may affect the facility owner or operator's fund eligibility pursuant to Rule 0400-15-03-.05.
- (2) The requirements of this rule apply to all drycleaning facilities and in-state wholesale distribution facilities.
- (3) To prevent drycleaning solvent releases, owners and operators of all active drycleaning facilities shall implement BMPs.
  - (a) Compliance with Existing Regulations and Standards

Except as set forth in 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.
  - (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 the facility owner or operator 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 shall have a Spill Contingency Plan by June 30, 2024. New facilities that open after June 30, 2024, must prepare a Spill Contingency Plan within six months after commencing operations. 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; the primary coordinator for such events.

(c) Solvent Delivery, Removal, and Transfer Systems

1. 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 is allowed. The facility's certificate holder in subparagraph (h) of this paragraph shall be present and adequately monitor the delivery of drycleaning solvents to prevent overfills and spills. Dense non-aqueous solvents or products shall be delivered to drycleaning facilities via closed, direct-coupled delivery systems. Light non-aqueous solvents or products shall be pumped from the solvent container directly into the machine.
2. Removal of drycleaning solvent for disposal shall be conducted in such a manner as to minimize the possibility of spills and releases. The facility's certificate holder 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. The transfer of solvent shall be conducted in a manner that minimizes the possibility of spills and releases. The facility's certificate holder in subparagraph (h) of this paragraph shall be present and adequately monitor the transfer. During transfer, 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.

(d) Waste Management

1. As much as practicable, waste containing solvent shall be recycled. No person shall place, store, or dispose of drycleaning solvent, a material containing drycleaning solvent, or waste containing drycleaning solvent in a location or manner where 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, groundwater, or surface water. At a minimum, no person shall:
  - (i) 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) 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 underground structure which may result in a release;

- (iii) 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, groundwater, or surface water;
- (iv) Pump or transport drycleaning solvent or waste containing drycleaning solvent through underground pipes or lines which are not readily visible 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 tetrachloroethylene or the appropriate solvent(s) in use at the drycleaning facility; and
- (v) 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 or without providing upgrading and release detection in the same manner as required for petroleum stored in petroleum underground storage tanks subject to Chapter 0400-18-01, except the partial exclusions listed in subparagraph (2)(b) of Rule 0400-18-01-.01 shall not apply.

- 2. 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 shipped off-site by a hazardous waste transporter permitted in accordance with Rule 0400-12-01-.04 to a designated facility, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, or to a drycleaning facility or in-state wholesale distribution facility otherwise authorized to receive the hazardous waste. A copy of all hazardous waste, 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 or product shall be placed in a sealed container, removed from the facility, and disposed of at 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. Waste shall be stored in labeled containers that are in good condition with tightly fitting lids 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 applicable 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 may 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. Used equipment filters shall be properly managed in accordance with this subparagraph.

(e) Materials Storage

- 1. Solvent and solvent-containing material 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 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. 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 must be impervious to, and not allow the transmission of, drycleaning solvent.
5. The secondary containment units used for solvent and waste storage shall be constructed of steel or polyethylene and provide sufficient leak protection to prevent spills and releases from reaching the environment.

(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 to abate to the greatest extent reasonably possible, further consequences to human health and the environment.
2. If it becomes reasonably apparent that there has been a release of seven gallons or more of solvent or solvent-containing material, then the owner or operator of 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.

(h) Each drycleaning facility shall be staffed by at least one person who is a Certified Environmental Drycleaner (CED) as certified by the Drycleaning & Laundry Institute or its successor, or has a certification deemed equivalent by the Commissioner to meet this requirement. In the event of termination of employment or loss of certification by the CED, the owner or operator of the facility has six months to replace the CED. A certified person shall be on-site at all times the drycleaning machine is in operation; at any time the drycleaning machine is being inspected, maintained, or repaired; and at any time solvent or filters are added or removed from the drycleaning machine.

(i) To prevent the possible migration of solvents into soil, 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

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 material, including all drycleaning waste, 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 shall be pumped

from any idled machine(s) 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 material from the drycleaning facility, the drycleaning facility shall notify the Commissioner in writing and obtain approval from the DCERP.
3. Within 30 days of removing the solvent and solvent-containing material from the facility in accordance with part 1 of this subparagraph, the facility owner or operator shall send a notification to the Commissioner, on forms provided by the Commissioner, certifying the date and manner in which the facility was closed. Manifests and other documentation showing the disposition of the solvent, solvent-containing material, and waste shall be submitted with the letter.

(4) All in-state wholesale distribution facilities shall implement the BMPs established in this paragraph to prevent the release of drycleaning solvents.

(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 facility owner or operator 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; 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; the primary coordinator for such events.

(b) Materials Storage and Handling

1. Solvent and solvent-containing material 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. 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 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. Facility owners or operators shall ensure that any release of drycleaning solvent is immediately contained and recovered, to abate to the greatest extent reasonably possible further consequences to human health and the environment.
3. 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 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 owners or operators 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 must 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) To prevent the possible migration of solvents into soil, 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) 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 is allowed. Delivery of drycleaning solvents shall be adequately monitored to prevent overfills and spills. Dense non-aqueous solvents or products shall be delivered to drycleaning facilities 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.

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) This rule is promulgated to establish guidelines and procedures by which applicants investigate and remediate sites to preserve the right to seek reimbursement of expenses from the DCERF.



- (b) This rule applies to all applicants.
  - (c) 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 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 DCERP
- (a) Persons wishing to apply for entry into the DCERP and reimbursement of costs from the DCERF for eligible expenses shall first submit an application for the Commissioner's review and approval.
  - (b) An application must be submitted by the applicant to the Commissioner in a format determined by the 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, 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 Commissioner 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 Rule 0400-15-03-.04.
    3. In all applications, a person with appropriate legal authority shall grant the applicant, the applicant's DCAC(s), and the Commissioner the right of ingress and egress to the facility to perform the activities authorized by the DCERP.
    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 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 DCERF reimbursement under the DCERP and the applicant's point of contact concerning the application.
    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 DCERF eligibility. The applicants shall designate the person who will receive DCERF reimbursement under the DCERP and the applicant's point of contact concerning the application.
    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.
    7. Any other information requested by the Commissioner.
  - (c) The Commissioner shall confirm in writing to the applicant that an application has been received and identify any alleged deficiencies. Subject to the availability of funds in the DCERF, and after

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

- (3) If a facility inspection is required by the Commissioner, the 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, solvent purchases, waste handling practices, equipment maintenance and repair, equipment upgrades, and other items requested by the 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 Commissioner. The applicant shall submit a facility inspection report to the Commissioner in a format and according to a schedule determined by the Commissioner. A facility may be re-inspected by Department staff.
- (4) Fund Eligibility Determination
- (a) After review of the application and facility inspection, the Commissioner shall notify applicants in writing of the Commissioner's determination on acceptance into the DCERP and DCERF eligibility. If the applicant is denied entry into the DCERP or DCERF, the notification shall include the reasons for denial. The reasons for denial shall include:
1. The applicant 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. The facility 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. Failure of an abandoned or active drycleaning facility or in-state wholesale distribution facility to have been registered during any active operations after June 13, 1995;
  4. Failure to pay all applicable registration fees, penalties, and interest;
  5. Failure to pay all applicable surcharges and penalties;
  6. Failure to implement applicable BMPs at a drycleaning facility or in-state wholesale distribution facility;
  7. Failure to conduct an appropriate facility inspection;
  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
  11. Failure to comply with other requirements of this chapter or the Act.
- (b) If fees, surcharges, interest, or penalties have not been paid, the applicant will not be accepted into the DCERP and will not be eligible for reimbursement of response costs other than the initial facility inspection until all money owed has been paid.
- (c) If applicable BMPs have not been implemented, the applicant will not be accepted into the DCERP and will not be eligible for reimbursement of response costs other than the initial facility inspection. If the applicant corrects any deficiencies, the applicant may be accepted into the

DCERP and may be eligible for fund reimbursement for any releases that the applicant 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 DCERF reimbursable.

(d) Real Property Owner as Impacted Third Party

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 facility will remain eligible for reimbursement of response costs beyond the initial facility inspection unless:
  - (i) Such party:
    - (I) Had actual knowledge of the operator's failure to implement BMPs prior to the release, and
    - (II) Failed to notify the Department of such operator's failure within 60 days of such knowledge; or
  - (ii) Such party failed to make a good faith effort to require the operator's compliance with applicable BMP requirements. 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.
2. Notwithstanding compliance with the provisions of part 1 of this subparagraph, 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 DCERF reimbursement:
  - (i) The site must be an abandoned facility; or
  - (ii) The impacted third party must terminate the tenancy of the operator of the drycleaning facility.
3. Eligibility for 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.
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 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 apply for the DCERF within a specified time period. If neither the operator of the facility nor the real property owner enters the DCERP and corrects the deficiencies, the Commissioner may initiate activities to evaluate the site under Chapter 0400-15-01 Inactive Hazardous Substance Site Remedial Action Program. 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.

- (e) If any deficiencies are either uncorrectable or not corrected within a time frame specified by the Commissioner, the applicant may be denied DCERF access. If DCERF access is denied, the applicant shall have 30 days from the Commissioner's mailing of the notice to appeal the denial to the Commissioner in the manner set forth in Section 5(a) of Rule 0400-15-03-.03. If the Commissioner upholds the denial of DCERF access, or if an appeal is not made within 30 days, the Commissioner may revoke the operator's Certificate of Registration pursuant to Rule 0400-15-03-.10, notify 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 that receive a notice of DCERF eligibility, the applicant shall perform a prioritization investigation according to a format established by the 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 that may not be exceeded in the prioritization investigation; and a schedule for implementation of the prioritization investigation. The applicant shall make any changes to the work plan, cost proposal, or schedule of implementation required by the Commissioner. Subject to the availability of funds in the DCERF, approval of the work plan, cost proposal, and approval of the proposed schedule, the 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 Commissioner. Following the prioritization investigation, the applicant shall submit the results of the prioritization investigation to the Commissioner according to a schedule and in a format determined by the Commissioner. The applicant may perform activities in addition to work requested by the Commissioner at the prioritization investigation stage; however, only activities specifically pre-approved by the Commissioner shall be DCERF eligible expenses for the prioritization investigation. If additional activities are performed, results of the additional work shall be submitted to the Commissioner within 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 Commissioner, the Commissioner shall evaluate all pertinent information and make a determination for further investigation and remediation of any release of drycleaning solvent. At the Commissioner's discretion, a prioritization investigation may also be performed by the Commissioner.
- (6) Prioritization for Further Investigation or Interim Action
- (a) The Commissioner shall utilize the prioritization investigation report and other applicable information to prioritize approved sites for further investigation or interim action.
  - (b) Subject to the availability of funds in the DCERF, additional activities will be approved at sites in accordance with the priority ranking schedule.
  - (c) At all stages within 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 DCERP are at any time subject to reprioritization by the Commissioner based upon the receipt of additional data that may affect the prioritization determination.
- (7) Implementation of Interim Actions
- (a) Interim Action
    - 1. The Commissioner shall notify the applicant of the Commissioner's determination of the need for interim action within 60 days of receiving a complete prioritization investigation. Subject to the availability of funds in the DCERF, the 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 Commissioner according to the schedule and in the format required by the Commissioner. The applicant shall make any changes to the work plan, cost proposal, or schedule of implementation required by the 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 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 Commissioner. The Commissioner may declare the applicant ineligible for reimbursement if the interim action is not performed in accordance with the schedule and work plan requested by the Commissioner. The Commissioner may declare the applicant ineligible for reimbursement if the solvent impact assessment is not performed in accordance with the schedule and work plan requested by the Commissioner.
3. Following the interim action, the applicant shall submit the interim action report to the Commissioner according to a schedule and in a format determined by the Commissioner. If the applicant or the Commissioner performed interim action at the site, then the site will be re-prioritized for investigation.

(b) Solvent Impact Assessments

1. The Commissioner shall notify the applicant of the Commissioner's determination of the need for a solvent impact assessment within 60 days of receiving a complete prioritization investigation. Subject to the availability of funds in the DCERF, the 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 Commissioner for approval according to the schedule and in the format required by the Commissioner. The applicant shall make any changes to the work plan, cost proposal, or schedule of implementation required by the 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 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 Commissioner. Following the investigation, the applicant shall submit the solvent impact assessment report to the Commissioner according to a schedule and in a format determined by the Commissioner. The Commissioner may declare the applicant ineligible for reimbursement if the solvent impact assessment is not performed in accordance with the schedule and work plan requested by the Commissioner.
3. Unless required by subparagraph (6)(f) 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 Commissioner.

(c) Supplemental Investigations

1. If the 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 Commissioner according to the schedule and in the format requested by the Commissioner. The applicant shall make any changes to the work plan, cost proposal, or schedule of implementation required by the 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 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 report to the Commissioner according to a schedule and in the format requested by the 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 Commissioner.

(8) Remedial Alternatives Study

If requested in writing by the Commissioner following the Commissioner's review of the investigation report, the applicant shall submit a remedial alternatives study report to the Commissioner according to a schedule and in a format requested by the 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) Based on the results of a solvent impact assessment or interim action and other relevant factors, the Commissioner shall rank approved sites for remediation.
- (b) At all stages within 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.
- (c) Subject to the availability of 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, 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 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 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 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 Commissioner.

The Commissioner may declare an applicant ineligible for reimbursement if a remedial action is not performed in accordance with the schedule and work plan requested by the Commissioner.

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

(11) Response Complete Summary Letter

After all required interim action, investigation, remediation, and other required activities are completed at the site, a Response Complete Summary letter shall be issued to the applicant by the Commissioner. Following issuance of this letter and reimbursement of all authorized costs, the site shall return to non-

DCERF eligible status and the applicant may no longer receive DCERF reimbursements without reapplying for DCERF eligibility. Nothing in this paragraph shall prevent the Commissioner from issuing an interim status letter while O&M or monitoring at a site is ongoing, or from continuing 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 DCERP may provide oversight of registered facilities requesting review that will not be seeking DCERF reimbursement. Prior to issuance of a Response Complete Summary Letter, the DCERP will ensure that the investigative and remedial activities were comparable to sites participating in the DCERP for reimbursement of environmental response activities and that to the extent practicable were consistent with the requirements of this chapter. The requester shall submit a written request to the Commissioner for 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 DCAC; signed acknowledgment that costs expended will not be eligible for reimbursement from the DCERP; and that all pertinent documents and reports have been submitted to the Commissioner. The requestor shall pay a program oversight fee of \$5,000.
- (b) The Commissioner may provide oversight of unregistered facilities requesting reviews that will not be seeking DCERF reimbursement. The Commissioner may deny any request for a review that is not reasonable or cost effective. Prior to issuance of a Response Complete Summary Letter, the DCERP will ensure that the investigative and remedial activities were comparable to sites participating in the DCERP for reimbursement of environmental response activities and that to the extent practicable were consistent with the requirements of this chapter. The requester shall submit a written request to the DCERP for review or oversight and shall include an acknowledgement that costs expended will not be eligible for reimbursement from the DCERP and shall submit all pertinent documents and reports related to environmental activity at the site. The requester shall pay a program oversight fee of \$5,000.
- (c) Notwithstanding the request for and provision of oversight under the DCERP pursuant to either subparagraph (a) or (b) of this paragraph, any applicant may apply for entry of a facility in the DCERP in accordance with this rule and proceed to comply with the requirements 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 DCERP.

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 Commissioner may withdraw any favorable determination concerning any application for entry into the DCERP previously granted if the Commissioner determines that the applicant is in willful noncompliance with the provisions of the Act or this chapter. Willful noncompliance includes, but is not limited to:
  - (a) An applicant's misrepresentation of facts in its registration application or its petition for entry into the DCERP;
  - (b) The applicant's failure to timely adopt, install, or maintain any applicable BMP;
  - (c) An applicant's misrepresentation of environmental conditions concerning the applicant's site; an applicant's unreasonable delay in submission of pertinent site data and information; an applicant's filing or reporting of false, misleading, or inaccurate information with the Commissioner; or any other such actions taken by the applicant which impedes the Commissioner's ability to properly evaluate the site or determine appropriate response actions for 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 an order pursuant to Rule 0400-15-03-.10. The order shall include a statement of the facts constituting the alleged violations. The order may also provide for the immediate suspension of reimbursement payments from the DCERF and for the return of any DCERF payments made to any person that was ineligible at the time of receipt of the funds from the DCERF. Known impacted third parties shall also be sent notice of the withdrawal of approval by the Commissioner. Notice to impacted third parties shall be sufficient if written notice is provided to any lessor of real property, known to the 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 Commissioner, who owns or leases property that is known or suspected by the Commissioner to have been contaminated from the release in question by solvents.

(3) The Commissioner may, through an order issued pursuant to Rule 0400-15-03-.10, withdraw any favorable determination concerning any PEP who:

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

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

(4) Appeal of Order

(a) Any person against whom an order is issued may appeal by filing a written petition pursuant to Rule 0400-15-03-.10. The petitioner shall provide a copy of 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 DCERF payments by the Commissioner shall remain in effect pending any appeal of an order.

(b) Should the petitioner and the Commissioner agree to hear a contested case at a time other than the time communicated to impacted third parties, then the known impacted third parties shall be notified by the petitioner of the new hearing date as soon as practicable.

(c) Following the hearing of a contested case, the Commissioner shall determine whether the petitioner should be eligible for reimbursement of some or all of its expenses from the DCERF. If the 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 Commissioner, and the petitioner shall not otherwise be eligible for DCERF benefits.

(5) If a person becomes ineligible for DCERF reimbursement because of conduct occurring after the granting of the petition for entry into the DCERF, another applicant may only obtain reimbursement from the DCERF for the site only so long as all requirements for the site, including the payment of registration fees, surcharges, penalties, and interest are met.

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

0400-15-03-.07 Reserved.

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) DCERF Obligations

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

1. Available monies in the DCERF shall be obligated for response activities based on the



priority ranking system and statutory limitations. For sites that have equivalent ranking status, funds from the DCERF will be obligated according to the chronological order in which the complete application for entry into the DCERP was received.

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

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

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

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

1. In the event that an applicant, with Commissioner approval, undertakes actions that are reimbursable under the Act after entry into the DCERP but before 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 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 this chapter shall be eligible for reimbursement according to the law, this chapter, and guidance in effect at the time the activities were performed. Applicants performing activities under this subparagraph must meet all requirements for DCERF eligibility applicable at the time the activities are performed to receive future reimbursement.
3. Only work plans and cost estimates approved in writing by the Commissioner after October 15, 1997, are eligible for reimbursement.

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

(2) Scope of Fund Coverage

(a) The DCERF will reimburse applicants accepted into the DCERP for the reasonable cost of Commissioner-authorized inspection, investigation, and remediation, exclusive of interest, at the applicants' sites. All costs consistent with cost estimates approved by the 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 when an applicant accepted into the DCERP requests reimbursement from the Commissioner:

1. The deductible shall be 10% per reimbursement with a maximum deductible of \$50,000.
2. An impacted third party's deductible is the same as the facility for which DCERF coverage is sought.
3. If an applicant reenters facilities or sites into the DCERP for any reason, the applicant is required to pay a new deductible.

(3) Authorized Disbursements from the DCERF

- (a) Whenever the Commissioner determines a release has occurred at an eligible site, the Commissioner shall, subject to the provisions of this chapter including site prioritization, disburse monies available in the DCERF to provide for reimbursement of the reasonable cost of:
  - 1. Commissioner-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, 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. Costs of any such response actions from the Hazardous Waste Remedial Action Fund may be reimbursed from the DCERF with the Commissioner's approval.
- (c) The costs for reasonable initial abatement and site stabilization activities are DCERF eligible, up to \$5,000 and subject to applicable deductibles, without submission and prior 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 required by the Commissioner pursuant to paragraph (3) of Rule 0400-15-03-.05 are eligible for reimbursement, regardless of whether the facility inspection determines that the site is eligible or ineligible for further reimbursement.
- (e) Costs incurred by the Commissioner in the administration of the Act and this chapter shall be charged to the DCERF.
- (f) The DCERF shall be available to 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 DCERF for:
  - 1. Hiring consultants and personnel;
  - 2. Purchasing, leasing, or renting necessary equipment;
  - 3. Conducting interim actions; and,
  - 4. Other necessary expenses.

(4) DCERF Ineligible Costs

- (a) The Commissioner shall not authorize distribution of monies from the DCERF that would result in a diminution of the DCERF below a balance of \$100,000 unless an emergency exists at a facility or site that constitutes an imminent and substantial threat to human health or the environment.
- (b) The Commissioner shall not authorize distribution of DCERF monies as specified in T.C.A. § 68-217-107(c).
- (c) The Commissioner shall not authorize distribution of DCERF monies for response actions not undertaken in accordance with this chapter and guidance established by the Commissioner.

- (d) Monies held in the DCERF shall not be used to reimburse costs incurred by owners or operators of facilities in conducting repairs, retrofits, building or equipment improvements, building renovations or remodels, or the implementation of BMPs.
- (e) The 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 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 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 this chapter. In addition, the DCERF shall not be used for the landscaping of sites but shall only be used to restore those portions of the site affected by DCERF-approved activities to a safe condition. Finally, the 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 this chapter.
- (f) The DCERF shall not be obligated and shall not pay out any funds for costs in which there was no prior written Commissioner authorization or that were incurred prior to October 15, 1997.
- (g) Monies held in the 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 DCERF Eligibility

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

- (a) The owner or operator manages the facility in compliance with the Act and the requirements of this chapter, including but not limited to applicable BMPs.
- (b) All required fees, surcharges, penalties, and interest are paid and current.
- (c) The following records are maintained on-site or at a readily available alternative site and made available to the Commissioner upon request:
  1. Drycleaning facilities:
    - (i) Documentation of solvent purchases or transfers;
    - (ii) Waste disposal manifests;
    - (iii) Documentation of equipment maintenance, repairs, or retrofits, including BMPs;
    - (iv) Documentation of all site investigation and cleanup plans and expenses; and
  2. In-state wholesale distribution facilities:
    - (i) Documentation of solvent sales or transfers;
    - (ii) Waste disposal manifests;
    - (iii) Documentation of equipment maintenance, repairs, or retrofits, including BMPs;
    - (iv) Documentation of all site investigation and cleanup plans and expenses.
- (d) Unless the Commissioner instructs otherwise, all records required to be maintained by subparagraph (c) of this paragraph shall be retained for five years after:
  1. The Commissioner issues a letter that states all necessary investigation and remedial

work has been completed or that no investigation and remediation is necessary with respect to a site (a Response Complete Summary Letter); or

2. Ownership and all records pertaining thereto are transferred to a new owner.

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

(6) Requirements for DCERF Reimbursement of Response Costs

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

(a) Applicants must:

1. Perform initial response actions in accordance with paragraphs (5) and (7) of Rule 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;

2. Select a person from the Department's DCAC list and notify the Commissioner in writing of such a selection within 30 days or other time specified by the Commissioner; and

3. Within 30 days of selection, establish a contractual agreement with the DCAC and provide a letter signed by both parties confirming that a contractual relationship exists for environmental response actions.

(b) Following completion of necessary site stabilization actions, the cost estimates for subsequent inspections, investigations, and corrective actions must be approved by the Commissioner in accordance with Rule 0400-15-03-.05, and the work performed by DCACs must be approved in accordance with the requirements of Rule 0400-15-03-.09. Response actions, other than those identified in subparagraph (a) of this paragraph, performed prior to 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.

(c) Upon review of cost estimates for DCERF eligible activities, the 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 determined not to be reasonable.

(d) In addition to the requirements of subparagraph (b) of this paragraph, the 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 Commissioner in projecting future funding requirements for the DCERF. The estimate shall be updated by the applicant as more complete information regarding the site becomes available.

(e) Upon approval of a cost estimate by the Commissioner, sufficient monies will be obligated from the DCERF for completion of the approved 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 approval by the Commissioner.

(f) The cost of completing any task in an approved work plan that exceeds the amount in the approved cost estimate may be denied by the Commissioner unless:

1. An amended written cost estimate is submitted and approved before the initially-approved cost estimate is exceeded; or

2. Informal written approval is given by the Commissioner, and within two working days, a written amended cost estimate consistent with such informal written approval is submitted

to the Commissioner.

(7) Reimbursement Requests

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

“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 reimbursement request; and that no charges are presented as part of this reimbursement request that do not directly relate to the performance of response actions related to the release of solvent at this site. I understand that any misrepresentation or omission regarding the reimbursement request may be considered willful noncompliance with Chapter 0400-15-03 and may serve as a sufficient basis for the Commissioner’s denial of the reimbursement request and future access to DCERF reimbursement.”
- (c) If a site has previously been the subject of a reimbursement request for DCERF eligibility that was denied, and where the reasons for denial have been properly cured or are subject to cure as set forth in this chapter, the burden shall be on the applicant to demonstrate by substantial and material evidence in the reimbursement request that the request does not include actions or expenses for releases that were the subject of reimbursement requests that have been previously denied.
- (d) Reimbursement requests for the implementation of response actions may be submitted 60 days following initiation of work to implement the work plan and at 60-day intervals thereafter until completion of the authorized activities. For work phases that will be completed within three months or less, the Commissioner recommends that a reimbursement request be submitted following the completion of the pre-approved work. Interim billings for phases of work that will not be completed in three months or less 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 Commissioner may request a status report to be submitted with each reimbursement request. Upon request, the Commissioner may approve interim payments at more frequent intervals.
- (e) All payments shall be subject to review for compliance with this chapter by the Commissioner. Should a site inspection or other information reveal a discrepancy between work performed and the work addressed by a reimbursement request, the Commissioner may deny payment or may require the DCERF to be reimbursed for money already disbursed. Denied payments may be appealed to the Commissioner; however, the appeal must be filed within 30 days of the Commissioner notifying the applicant by mailing a certified letter of the denial.
- (f) Notwithstanding the provision of subparagraph (d) of this paragraph, to be eligible for payment from the DCERF, a reimbursement request must be received by the 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 10 of the prior year would not be reimbursable by the DCERP if the reimbursement request was received on or after May 11 of the current year.
- (g) If the DCERF reimburses a party for response costs under 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 provide written notification to the DCERP within 30 days. The DCERP will not reimburse costs for which the owner or operator received payment from an insurance carrier or other third-party payer.

(8) DCERF Payment Procedures

- (a) Payments from the DCERF will be made directly to the PEP in cases where the PEP submits documentation verifying it has paid authorized costs in excess of the applicable deductible.
- (b) The PEP is responsible for final payments to the DCAC(s) performing the work including DCERF deductibles. The PEP is responsible for making timely payments to the DCAC(s) in accordance with the contract between the parties.
- (c) The Commissioner shall issue either a letter of reimbursement approval or a status review letter within 90 days of receipt of a properly completed reimbursement request. A status review letter from the Commissioner to the PEP shall note such items as: what clarifications or additional information, if any, are needed to complete the review and what problems were encountered, if any, in interpreting or evaluating the reimbursement request.

If the Commissioner determines that all costs are reasonable and eligible for reimbursement, payment will be issued within 45 days of approval. If the Commissioner determines that certain costs are unreasonable or ineligible for reimbursement, the Commissioner shall issue a check for the amount determined to be reasonable and eligible, give notice by mailing a certified letter to the PEP of those costs denied reimbursement and the reasons for denial, and provide a 45-day period from receipt of the certified letter in which the PEP or DCAC may present such information as is necessary to justify the disallowed costs. Following review of such information, the 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 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) DCAC(s) are not beneficiaries of the DCERF and shall have no right of claim against it. Any and all claims shall be against the applicant who hired the DCAC. An applicant can assign its rights to reimbursement from the DCERF to its DCAC for reimbursement amounts arising under the contract.
- (2) Neither an applicant nor the applicant's DCAC shall file false or inaccurate information with the Commissioner. Both the applicant and the applicant's DCAC are required to follow the methods and procedures established by the 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 Commissioner in the event that the DCAC ceases to exist.
- (3) A DCAC shall be a person, as defined in Rule 0400-15-03-.02, responsible for conducting and overseeing the inspection, investigation, or remediation of a site in the DCERP. The Commissioner shall establish and maintain a list of DCACs according to this rule. The DCAC list shall have three categories. There shall be one category for DCACs approved to perform facility inspections, a second category for DCACs approved to perform investigative work, and a third category for 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. A person may apply to qualify for multiple DCAC categories.
- (4) A person may be approved to perform DCERF eligible work upon satisfying the following:

- (a) The person submits a written application to become a DCAC to the Commissioner in a format determined by the Commissioner. The application shall include, as applicable, the following and any other information requested by the Commissioner:
1. The organizational history of the person; years in business; location of offices; form of business (e.g., sole proprietor, partnership, corporation); and a list of officers and principals including their mailing addresses and telephone numbers;
  2. A copy of the latest audited annual financial statement or other approved alternate proof of financial stability;
  3. Proof of insurance as required in subparagraph (5)(l) of this rule with the the Department listed as an additional insured;
  4. If applying to be included in the remediation category, a copy of the certificate documenting that the 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 \$500,000;
  5. A detailed organizational chart showing only the employee names and titles that will perform work under the DCERP, a description of the project organization relating to staff that will perform work under the DCERP, and an indication of which staff, by job title and location, will perform which services;
  6. A resume for each person listed on the organizational chart 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) All resumes must include, at a minimum, the following information:
      - (I) 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) The current position, title, and applicable licenses and registrations which the person holds. 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) 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 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);
  7. A description of the person's DCAC Experience that includes the following:
    - (i) If the person desires to be approved to perform facility inspections, descriptions of a minimum of three different facility inspections or facility audits performed by the current person's staff during the past three years at facilities which use or have on-site dense non-aqueous solvents or products, excluding PCBs;
    - (ii) If the person desires to be approved to perform investigations at sites in the

DCERP, descriptions of a minimum of three different investigations of contamination resulting from the release of dense non-aqueous solvents or products, excluding PCBs, in soil or groundwater, which current company staff has performed in the past three years;

- (iii) If the person desires to be approved to perform remediation phase work at sites in the DCERP, descriptions of a minimum of three different soil or groundwater remediation projects involving contamination resulting from the release of dense non-aqueous solvents or products, excluding PCBs, which current company staff have performed in the past three years. Remediation phase work includes, but is not limited to, preparing work plans and cost 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 Commissioner; designing, conducting, evaluating, and monitoring full-scale remediation site work; and implementing full-scale plans of remediation;
- (iv) If a person desires to be approved for a combination of facility inspection, site investigation, and site remediation, a minimum of three sites for each category for which the person is applying; and
- (v) In these descriptions, state the duties performed, type of facility inspected, contaminants investigated or remediated, results of the inspection, investigation or remediation, and other pertinent information which would show the person's competency in inspection, investigation and remediation of contamination resulting from the release of dense non-aqueous solvents or products, excluding PCBs.
  - (I) Only include sites worked by personnel who will work on sites in the DCERP.
  - (II) Indicate the personnel who performed the inspection, investigation, or remediation, describe their job duties, and limit the discussion to two typed pages per site per category;

8. Letters of recommendation for two sites described in part 7 of this subparagraph from clients describing the following:

- (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 the person's personnel;
- (ii) 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 the person's personnel; and/or
- (iii) 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 the person's personnel;

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

9. If the person, its officers, its principals, or any of the employees referenced in this subparagraph have previously been removed from the DCAC list, 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, a description of the circumstances, including the reason(s) for such action and the response action(s) taken by the person to assure there will not be similar problems in the future; and



10. A notarized statement, sworn by an executive officer or principal of the person including the following provisions:
  - (i) Neither the person nor any of the 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);  
or
    - (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 person nor any of the 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); or
    - (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;
  - (iv) The person understands that reimbursement from the DCERF will be in accordance with the reasonable rate schedule as established by the Commissioner; and
  - (v) The person and its personnel have the licenses and registrations required by the State of Tennessee to perform the activities that the contractor proposes to perform.

(b) DCAC Registration Fee

1. A non-refundable registration fee of \$500 shall be submitted with the application if the person is applying to be in one category of the DCAC list. A non-refundable fee of \$750

shall be submitted if the person is applying to be in more than one category on the DCAC list.

2. A 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 person may submit a separate DCAC application for each office location. Should one office location be disqualified 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 being a DCAC.
- (c) A person who demonstrates to the Commissioner's satisfaction that the person has: successfully performed significant past activities in facility inspection, investigation, or remediation of contamination resulting from the release of dense non-aqueous solvents or products, excluding 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 in subparagraphs (a) and (b) of this paragraph shall be included in the next published DCAC list in the appropriate category(ies) following receipt by the Commissioner of the required insurance certificate. For initial evaluation to become a DCAC, it shall be assumed by the Commissioner that if a person has sufficient experience and qualifications to perform investigation or remediation activities at sites contaminated by dense non-aqueous solvents or products, excluding PCBs, then the person has sufficient qualifications to perform comparable activities at sites contaminated with Stoddard or other drycleaning solvents. If the person, its officers, its principals, or any of the employees referenced in 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 person shall also be required to demonstrate to the satisfaction of the Commissioner that the circumstances, including the reason(s) for such actions, have been corrected and will not reoccur. A person who is not approved as a DCAC may appeal the Commissioner's determination to the Commissioner; however, the appeal must be filed within 30 days of the Department mailing the certified letter notifying the person of non-approval.
- (d) Prior to October 31 of each year, each DCAC shall submit a renewal application including the following and other information requested by the Commissioner on the renewal application:
1. List of personnel who will work on sites in the DCERP in the upcoming year, and for each 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 in subparagraph (a) of this paragraph.
  2. A valid insurance certificate showing insurance required by this chapter.
  3. A non-refundable fee of \$200 if the person is renewing as a DCAC in one category and a non-refundable fee of \$350 if the 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 \$500,000.
- (5) To remain on a list of DCACs:
- (a) The DCAC shall abide by and comply with 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. 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 Occupational Safety and Health Administration (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 DCERF eligible site, and the contract shall contain the following sentences conspicuously located on the first page of the contract:
 

“[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 requests in accordance with Chapter 0400-15-03, including subparagraph (7)(d) of Rule 0400-15-03-.08.

On behalf of [Applicant’s Name], [Person’s Name] will prepare and submit timely reimbursement requests 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 drycleaner environmental response fund, a reimbursement request must be received, by the drycleaner environmental response program, within one year from the date expenses were incurred regardless of the duration of the work phase.
- (e) The 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 this chapter.
- (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.
- (h) The DCAC shall follow methods and procedures established by the DCERP for facility inspection, oversight of remediation, investigation, and remediation of sites. The DCAC shall collect, gather, compile, and maintain documentation requested by the Commissioner.
- (i) Unless otherwise specifically approved by the Commissioner in writing, 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 registered with the Tennessee Department of Commerce and Insurance, and the work shall be performed as specified according to a plan approved by the Commissioner. All plans and reports submitted to the 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 the work performed is as specified by the Registered Professional Engineer or Professional Geologist and according to a plan approved by the 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 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 Commissioner. If the work is not performed according to the plan approved by the Commissioner, the certification shall include a listing of how the work performed varies from the approved plan, 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.

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

(k) The DCAC shall maintain liability insurance coverage of the types and with the minimum amounts described in parts 1 through 6 of this subparagraph, or the equivalent. The DCAC shall provide certification, with the Department listed as an additional insured on the DCAC's certificate of insurance, to the Commissioner of such coverage during the initial application process and yearly with the renewal application thereafter, or more frequently as necessary to keep the Commissioner updated as to the DCACs current insurance coverage. A lapse of required insurance coverage is sufficient cause for removal of the person 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 person becoming a DCAC. The insurance shall be written in a comprehensive form, to the Commissioner's satisfaction. The general liability and pollution insurance policies shall have the Department 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 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 or remediation activities, pollution insurance for bodily injury and property damage:

\$1,000,000 Each Occurrence

\$2,000,000 Aggregate

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

4. Personal injury:

\$1,000,000 Each Occurrence

\$2,000,000      Aggregate

5.      Comprehensive Automobile Liability:

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

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

\$1,000,000      Each Occurrence

6.      The DCAC shall require that all subcontractors that perform site work shall be covered by insurance to the limits stated in 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 DCAC shall file no additional plans, scopes of work, or cost estimates to the DCERP unless the stop work is removed by the Commissioner.

(m)      The DCAC shall submit timely annual registration renewal applications as required by subparagraph (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 actual or threatened release or exposure pathway, the DCAC shall take such action within 24 hours after discovery of the danger and shall provide notice to the applicant and the Commissioner of the interim action.

(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)(k) of this rule;

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

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

(g)      Has been the subject of any professional license 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);
  6. Theft of property (T.C.A. § 39-14-103);
  7. Fraud.
- (j) Is found to have engaged in the unauthorized practice of engineering, contracting, or geology under T.C.A. §§ 62-2-101 to -110, T.C.A. §§ 62-6-101 to -139, or T.C.A. §§ 62-36-101 to -122, or a comparable law in another jurisdiction by the appropriate regulatory agency or court;
- (k) Performs a non-approved action that increases costs for the DCERF, the drycleaner operator, or the impacted third party;
- (l) Files three plans that are rejected by the Commissioner as deficient or fails to correct a plan based on comments from the Commissioner without supplying acceptable explanation to the Commissioner;
- (m) Files plan(s) or report(s) that do not bear the appropriate signature and Tennessee registration number of a Registered Professional Engineer or Professional Geologist;
- (n) Deviates from a plan or scope of work as approved by the Commissioner without the approval of the 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 December 31 in the format required by the Department;
- (p) Performs work at a site in the DCERP after a stop work or termination date established by the Commissioner;
- (q) Fails to perform activities required in 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 in accordance with this chapter;
  - (s) Performs work in a category in which the DCAC is not approved;
  - (t) Fails to submit timely reports or reimbursement requests to the Commissioner; or
  - (u) Has been found guilty in a court of competent jurisdiction of falsification of data or issuing fraudulent invoices.
- (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 Commissioner or the Commissioner determines the person's activities as a DCAC should be evaluated.
  - (b) The Commissioner shall inform the person via certified mail that the person's activities as a DCAC under the DCERP are to be reviewed. The person shall submit to the Commissioner a list of all sites where the person is performing DCERF eligible work, and the person shall cooperate with the Commissioner in any and all ways requested by the Commissioner. The Commissioner shall perform its investigation and notify the person of the findings.
  - (c) The Commissioner may request the person to appear at a meeting to show cause why the Commissioner should not remove the person from the DCAC list.
  - (d) The person may request a meeting with the Commissioner.
  - (e) The Commissioner shall notify the person of the Commissioner's decision by sending a certified letter to the last known address of person on file with the DCERP. If the Commissioner determines that removal of the person from the DCAC list is warranted:
    1. The certified letter sent by the Commissioner to the person shall specify a date to terminate work on DCERF eligible sites. After the stop work date, no activities performed by the company on any DCERP site shall be DCERF reimbursable unless the company appeals to the Commissioner, and the Commissioner determines to allow the person to continue as a DCAC, or the person reappplies to the Commissioner, and is accepted by the Commissioner.
    2. The person shall have 30 days from the Commissioner mailing the certified letter notifying the person of removal from the list of DCACs to request an appeal. If the person does not appeal within the required time period, the decision of the Commissioner shall be final. An appeal to the Commissioner will stay the removal of the person from the DCAC list. However, an appeal to the Commissioner shall not prohibit the Commissioner from terminating or preventing the DCAC from working on DCERF eligible sites during the appeal process, and any work performed after the termination date and during said termination shall not be DCERF eligible whether or not the person remains on the DCAC list following appeal.
    3. The Commissioner shall notify all sites which the person identified as DCERF reimbursable sites of the stop work date and that the person's work after the stop work date is not eligible for reimbursement from the DCERF unless otherwise notified by the Commissioner.
  - (f) If a person is removed from the list, other DCACs with common officers or principals shall be reviewed to determine whether to remove those DCACs from the DCAC list.
  - (g) If a person is removed from the DCAC list, the person or a person with any of its principals or officers cannot reapply for a period of one year from date of removal. If a 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 (6)(h) of this rule or other violations listed in subparagraph (6)(i) of this rule, the 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 person's name or any other entity.

- (8) The DCAC list shall have a category which lists the number of times a person has been removed from the DCAC list. If a person, its principals, or its officers are removed from the list three times, then the person, its principals, and its officers are not eligible to reapply for addition to the DCAC list.
- (9) The initial application, renewal applications, plans and reports, and 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.”
- (10) The appearance of a person on the DCAC list shall in no way establish liability or responsibility on the part of the Commissioner, the DCERF, or the State of Tennessee regarding the services provided by the person or circumstances that may occur as a result of such services. Furthermore, the appearance on the DCAC list is not an endorsement by the Department or State of Tennessee for the person to perform any services outside of the DCERP.
- (11) A person 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 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 \$500,000.
- (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.
- (13) A DCAC may employ the environmental professional labor services of contractors or individuals who are not recognized by the Commissioner as a DCAC. In such cases, however, the qualifications of any staff that are used on a subcontracted basis shall 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 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.
- (14) It is the responsibility of DCACs to seek written clarification from the DCERP concerning whether 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 this chapter by issuing to a person an order for payment of any appropriate fees, surcharges, and penalties authorized under the Act, and 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 this chapter by issuing to a person an order to revoke a facility's Certificate of Registration or withhold re-issuance for failure to follow



the Best Management Practices in Rule 0400-15-03-.04 or for any other willful noncompliance with 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 this chapter by issuing to a person an order to withdraw any favorable determination concerning an application for entry into the program. Such order shall be delivered by personal service or shall be sent by certified mail, return receipt requested.

(2) Appeal of Order

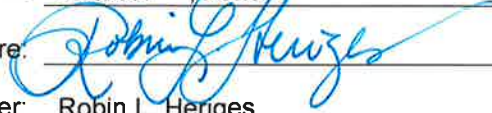
Any person against whom an order is issued may secure a review of the reasonableness, propriety, or amount of such order by filing with the Commissioner a written petition setting forth the grounds and reasons for the objection and asking for a hearing before the Commissioner. Any such order shall become final and not subject to review unless a petition is filed within 30 days after its receipt. 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: October 19, 2023

Signature: \_\_\_\_\_



Name of Officer: Robin L. Herges

Title of Officer: Deputy Director, Division of Remediation

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Filed with the Department of State on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State