**Section 1500.40 Drycleaner Remedial Account**

The Council shall have the authority *to provide reimbursement to eligible claimants for* remedial action associated with the release of drycleaning solvents from the claimant's drycleaning facility. (Section 40(a) of the Act)

a) *The following* claimants *are eligible for reimbursement from the remedial action account:*

1) *The owner or operator of an inactive drycleaning facility who was also the owner or operator of that drycleaning facility when it was an active drycleaning facility*.

2) *The owner or operator of an active drycleaning facility which is licensed by the Council under the Drycleaner Environmental Response Trust Fund Act at the time of application for remedial action benefits*. (Section 40(b) of the Act)

b) To be eligible for reimbursement, a claimant must demonstrate that drycleaning solvent contaminated soil, groundwater or both exceeds Illinois Environmental Protection Agency (Agency) tiered approach to corrective action objectives and all of the following:

1) *The source of the release is from the claimant's drycleaning facility.* (Section 40(c)(1) of the Act)

2) *At the time the release was discovered, the claimant and the drycleaning facility were in compliance with* all *the Agency reporting and technical operating requirements.* (Section 40(c)(2) of the Act)

3) *The claimant reported the release in a timely manner to the Agency in accordance with* the Illinois Emergency Planning and Community Right to Know Act [430 ILCS 100]. (Section 40(c)(3) of the Act)

4) *The release must have been discovered on or after July 1, 1997 and before July 1, 2006*. (Section 40(c)(7) of the Act)

5) *The claimant must submit a completed application form as provided by the Council* (see Section 1500.70(c)) *by June 30, 2005.* (Section 40(d) of the Act)

6) *If* the claim is for reimbursement of remedial action expenses at *an active drycleaning facility, the claimant must demonstrate continuous financial assurance for environmental liability coverage in the amount of at least $500,000 beginning the date of award of benefits under the Act or July 1, 2000, whichever is earlier. An uninsured drycleaning facility that has filed an application for insurance with the Fund by January 1, 2004, obtained insurance through that application, and maintained that insurance coverage continuously shall be considered to have conformed with the requirements of this* subsection (b)(6). *To conform with this requirement, the applicant must pay the equivalent of the total premiums due for the period beginning June 30, 2000 through the date of application plus a 20% penalty of the total premiums due for that period* and the claimant must provide *to the Council proof of implementation and maintenance of the following pollution prevention measures:* (Section 40(c)(5) and (6) of the Act)

A) Management of *all drycleaning solvent wastes in accordance with applicable State waste management laws and rules* in accordance with the Environmental Protection Act [415 ILCS 5] and 35 Ill. Adm. Code 722. (Section 40(c)(5)(A) of the Act)

B) *A prohibition on the discharge of wastewater from drycleaning machines or of drycleaning solvent from drycleaning operations to a sanitary sewer or septic tank or to the surface or* to *groundwater.* (Section 40(c)(5)(B) of the Act)

C) *Installation of a containment dike or other containment structure around each machine which is capable of containing a capacity of 110 percent of the drycleaning solvent in the largest tank or vessel in the machine for* *any leak, spill, or release of drycleaning solvent from that machine*.

D) *Installation of* *a containment dike or other containment structure around each item of equipment or drycleaning area in which any drycleaning solvent is utilized, which shall be capable of containing* a capacity of 100 percent of the drycleaning solvent capacity of each item of equipment or area for *any leak, spill, or release of drycleaning solvent from that item*. (Section 40(c)(5)(C)(I) of the Act)

E) *Installation of a containment dike or other containment structure around each portable waste container in which any drycleaning solvent is utilized, which shall be capable of containing a capacity of 100 percent of the drycleaning solvent capacity of the largest portable waste container, or at least 10 percent of the total volume of the portable waste containers stored within the containment device, whichever is greater*, for any leak, spill, or release of drycleaning solvent from that item. The portable waste container and containment dike should be located within the drycleaning facility. If the portable waste container is not located within the drycleaning facility, then the portable waste container and the containment device must be located in a structure designed to prevent unauthorized access and prevent exposure to natural elements and provide safety to human health and the environment. (Section 40(c)(5)(C)(I) of the Act)

F) *Petroleum underground storage tank systems that are upgraded in accordance with USEPA upgrade standards pursuant to 40 CFR 280* (1998) *for the tanks and related piping systems and use a leak detection system approved by USEPA or the Agency are exempt from this secondary containment requirement.* (Section 40(c)(5)(C)(I) of the Act)

G) All *diked floor surfaces on which a drycleaning solvent may leak, spill or otherwise be released* *must be sealed* *or otherwise rendered impervious* to drycleaning solvents. (Section 40(c)(5)(C)(II) of the Act)

H) Chlorine-based *drycleaning solvents* *shall be delivered to* *the* *drycleaning* *facility by means of closed, direct-coupled delivery* and vapor recovery *systems*. (Section 40(c)(5)(D) of the Act)

c) Subject to Fund limitations, eligibility requirements, prioritization and reimbursement limitations, the Council may reimburse up to but not to exceed *$300,000 per active drycleaning facility and $50,000 per inactive drycleaning facility.* (Section 40(f)(1) of the Act)

d) *An eligible claimant submitting a claim for an active drycleaning facility is responsible for the first $5,000 of eligible* focused site *investigation costs and for the first $15,000 of eligible remedial action costs incurred in connection with the release from the drycleaning facility and is only eligible for reimbursement for costs that exceed those amounts, subject to any other limitations of* the *Act.*  An eligible claimant submitting a claim for an active drycleaning facility is responsible for the first $5,000 of eligible focused site investigation costs and for the first $10,000 of eligible remedial action costs incurred in connection with the release from the drycleaning facility if the focused site investigation is completed and accepted by the Agency and a remedial action plan has been prepared and submitted to the Agency by January 1, 2008, and is only eligible for reimbursement for costs that exceed those amounts subject to any other limitations of the Act. (Section 40(e)(1) of the Act)

e) *An eligible claimant submitting a claim for an inactive drycleaning facility is responsible for the first $10,000 of eligible* focused site *investigation costs and for the first $15,000 of eligible remedial action costs incurred in connection with the release from that drycleaning facility, and is only eligible for reimbursement for costs that exceed those amounts, subject to any other limitations of* the *Act.* An eligible claimant submitting a claim for an inactive drycleaning facility is responsible for the first $10,000 of eligible focused site investigation costs and for the first $10,000 of eligible remedial action costs incurred in connection with the release from that drycleaning facility if the focused site investigation is completed and accepted by the Agency and a remedial action plan has been prepared and submitted to the Agency by January 1, 2008, and is only eligible for reimbursement for costs that exceed those amounts subject to any other limitations of the Act. (Section 40(e)(2) of the Act)

f) For the purpose of claimant reimbursement, eligible expenses are limited subject to the following:

1) For remedial action activities that occurred on or after July 1, 1999, only those costs that are pre-approved by the Council are eligible for reimbursement unless an emergency exists. In the case of an emergency, the Council may reimburse reasonable expenses for remediation services required to mitigate the emergency conditions.

2) For remedial action activities that occurred prior to July 1, 1999, the Council may reimburse costs that the Council determines were reasonable and necessary.

3) To be pre-approved for reimbursement, remedial action activities must be required under the site remediation program. Only services required to obtain a no further remediation letter for the drycleaning solvent of concern, based upon continued land use as a drycleaning facility, are reimbursable.

4) *A contract in which one of the parties to the contract is a claimant, for goods or services that may be payable or reimbursable from the Council, is void and unenforceable unless and until the Council has found that the contract terms are within the range of usual and customary rates for similar or equivalent goods or services within this State and has found that the goods or services are necessary for the claimant to comply with Council standards* or with the site remediation program. (Section 40(f)(2) of the Act)

5) *The Council may require a claimant to obtain and submit 3 bids and may require* that the bids contain *specific terms and conditions* consistent with the requirements of the site remediation program and the site specific characteristics of the drycleaning facility for which budget approval is requested. Approval of a bid will be both price and scope specific. (Section 40(f)(4) of the Act)

6) *If a claimant has pollution liability insurance coverage other than coverage provided by the insurance account under the Act, that coverage shall be primary. Reimbursement from the remedial account shall be limited to the deductible amounts under the primary coverage and the amount that exceeds the policy limits of the primary coverage, subject to the deductible amounts of the Act. If there is a dispute between the claimant and the primary insurance provider, reimbursement from the remedial action account may be made to the claimant after the claimant assigns all of his or her interests in the insurance coverage to the Council.* (Section 40(f)(9) of the Act)

7) Reimbursement of any amount from the Fund for remedial action shall be subject to the Council acquiring by subrogation the rights of any claimant or other person to recover the costs of remedial action for which the Fund has compensated the claimant.

8) If, for any reason, the Council determines that an excess payment has been paid from the Fund, the Council may take steps to collect the excess amount.

9) *Cost recovery; enforcement.*

A) *The Council may seek recovery from a potentially responsible party liable for a release that is the subject of a remedial action and for which the Fund has expended moneys for remedial action. The amount of recovery sought by the Council shall be equal to all moneys expended by the Fund for and in connection with the remediation, including but not limited to reasonable attorneys' fees and costs of litigation expended by the Fund in connection with the release.* (Section 50(a) of the Act)

B) *Except as provided in subsections* (f)(9)(C) and (D):

i) *The Council shall not seek recovery for expenses in connection with remedial action for a release from a claimant eligible for reimbursement except for any unpaid portion of the deductible.*  (Section 50(b)(1) of the Act)

ii) *A claimant's liability for a release for which coverage is admitted under the insurance account shall not exceed the amount of the deductible, subject to the limits of insurance coverage.*  (Section 50(b)(2) of the Act)

C) *Notwithstanding subsection* (f)(9)(B), *the liability of a claimant to the Fund shall be the total costs of remedial action incurred by the Fund, as specified in subsection* (f)(9)(A), *if the claimant has not complied with the Environmental Protection Act* [415 ILCS 5] *and its rules or with the Act and its rules.* (Section 50(c) of the Act)

D) *Notwithstanding subsection* (f)(9)(B), *the liability of a claimant to the Fund shall be the total costs of remedial action incurred by the Fund, as specified in subsection* (f)(9)(A), *if the claimant received reimbursement from the Fund through misrepresentation or fraud, and the claimant shall be liable for the amount of the reimbursement.* (Section 50(d) of the Act)

E) *Upon reimbursement by the Fund for remedial action under the Act, the rights of the claimant to recover payment from a potentially responsible party are assumed by the Council to the extent the remedial action was paid by the Fund. A claimant is precluded from receiving double compensation for the same injury. A claimant may elect to permit the Council to pursue the claimant's cause of action for an injury not compensated by the Fund against a potentially responsible party, provided the Attorney General or his or her designee determines the representation would not be a conflict of interest.* (Section 50(e) of the Act)

F) *This* subsection (f)(9) *does not preclude, limit, or in any way affect any of the provisions of or causes of action pursuant to Section 22.2 of the Environmental Protection Act* [415 ILCS 5/22.2]. (Section 50(f) of the Act)

10) Upon receipt of a signed, written request from the claimant and verification that the applicable deductibles have been paid by the claimant, the Council will directly pay to the primary service provider the amount of reimbursement due the claimant from the Fund for remedial action activities. The claimant must submit to the Fund a copy of cancelled checks supporting that the applicable deductibles have been paid, along with a signed, written statement from the primary service provider verifying the applicable deductibles have been paid. This request will remain in effect until:

A) it is rescinded in writing by the claimant; or

B) the Fund has reimbursed the maximum benefit allowed; or

C) the claim is closed and the Fund has reimbursed the total amount approved for remedial action activities performed at the facility.

11) Upon enrollment in the Agency's site remediation program and receipt of a signed, written request from the claimant, the Fund may pay the Agency directly, on eligible claims, the cost incurred by the Agency in its oversight of the drycleaning facility with respect to which the claimant obtained a No Further Remediation letter. This request will remain in effect until:

A) the Fund has reimbursed the maximum benefit allowed; or

B) the claim is no longer eligible for benefits from the Fund; or

C) the facility has completed the project with the Agency and all related oversight costs have been paid in full to the Agency.

g) Prioritization based upon Fund limitations.

1) The liability of the Fund is further limited by the monies made available to the Fund, and no remedy shall be provided that would require the Fund to exceed its then current funding limitations to satisfy an award or that would restrict the availability of monies for higher priority sites. *The Council may prioritize the expenditure of funds from the remedial action account whenever it determines that there are not sufficient funds to settle all current claims. In prioritizing, the Council may consider the following:*

A) *The degree to which human health is affected by the exposure posed by the release* (Section 25(c)(1) of the Act);

B) *The reduction of risk to human health derived from remedial action compared to the cost of the remedial action* (Section 25(c)(2) of the Act);

C) *The present and planned uses of the impacted property* (Section 25(c)(3) of the Act).

2) If the Council determines that there are not sufficient funds to settle all current claims and that prioritization is necessary, the Council will provide notice to all eligible claimants of the need for prioritization and the prioritization schedule. The Council may designate cash reserves to pay for focused site investigations performed through June 30, 2006 and to pay for unknown remediation costs associated with claims that have been prioritized. The Council shall designate funding up to $800,000 per year for 3 consecutive years to complete the focused site investigation at eligible drycleaning facilities that should be able to obtain a No Further Remediation letter from the Agency using institutional controls with minimal funding. The initial claim prioritization will include all eligible claims as of the prioritization date set by the Council. Subsequent claim prioritizations will include all eligible claims as of the prioritization date set by the Council, excluding all claims that have previously been prioritized. All claims in the initial prioritization must be funded before conducting subsequent prioritizations. This funding methodology will apply to all subsequent prioritizations.

3) The prioritization schedule is as follows:

A) First priority will be the abatement of emergency conditions that present an immediate threat to human health and safety, such as explosive vapors in basements or utility conduits and migration of free products into the water supply line or to the off site property.

B) Second priority will be the drycleaning facilities located in a township without a groundwater ordinance and when the drycleaning solvent contamination of soil and groundwater of such facilities is likely to cause an immediate adverse effect on human health by contaminating potable water resources.

C) Third priority will be the drycleaning facilities with drycleaning solvent contaminants of soil and groundwater where migration of these contaminants to neighboring properties seems imminent or immediate, which can result in more costly and complicated remediations in the future.

D) Fourth priority will be drycleaning facilities at which soil and/or groundwater contamination is at concentration higher than soil saturation limits of drycleaning solvents, according to TACO regulations of the Agency. Active remediation is required to address free product drycleaning solvent contamination.

E) Fifth priority will be the drycleaning facilities in which soil and/or groundwater contamination is higher than the TACO Tier II level but less than the TACO soil saturation limit. Active remediation may be required or a No Further Remediation letter may be achieved through installation of an engineering barrier and/or through the use of institutional controls.

F) When the Council determines it necessary to prioritize the claims, each individual claim will be ranked using the following numerical ranking system:

|  |  |  |
| --- | --- | --- |
| Ranking Score | = | (S1 x 20) + (S2 x 10) + (S3 x 8) + (S4 x 6) + (S5 x 4) + (S6 x 2) |

Where:

|  |  |  |
| --- | --- | --- |
| S1 | = | Emergency condition |
| S2 | = | Potable water resources contamination |
| S3 | = | Migration of contaminants through groundwater or through soil/rock fractures to the neighboring properties |
| S4 | = | Facilities with free product solvents |
| S5 | = | Facilities with higher than the TACO Tier II level of solvent contamination |
| S6 | = | Facilities with less than the TACO Tier II level of solvent contamination |

i) Emergency condition (S1)

Toxic fumes or explosion possibility, i.e., free product migration, etc.

Points: 5

ii) Potable water resources contamination (S2)

Imminent or immediate risk to public water resources such as public wells, rivers, and surface water reservoirs and lakes

|  |  |
| --- | --- |
| Distance | Points |
| Within 500 feet | 5 |
| Within ¼ mile | 4 |
| Within ½ mile | 3 |
| Within 1 mile | 2 |
| Within 1½ miles | 1 |

iii) Migration of contaminants with groundwater or through soil/rock fractures to the neighboring properties (S3)

Time period for the migration of contaminants to the neighboring property given seepage velocity of groundwater and size and location of contamination plume

|  |  |
| --- | --- |
| Time | Points |
| Within 6 months | 5 |
| Within 1 year | 4 |
| Within 1½ years | 3 |
| Within 2 years | 2 |
| Within 2½ years | 1 |

iv) Facilities with free product solvents (S4)

The soil at the facility is contaminated with drycleaning solvent higher than TACO soil saturation limits (i.e., PCE > 240 ppm and TCE > 1300 ppm) and/or free product was discovered in on-site wells

|  |  |
| --- | --- |
| Groundwater Ordinance | Points |
| Rejected or not available | 5 |
| Only approved by the township | 4 |
| Approved by the Agency and township | 3 |

v) Facilities with higher than the TACO Tier II level of solvent contamination (S5)

Facilities with higher than the TACO Tier II level of solvent contamination but less than soil saturation limits

|  |  |
| --- | --- |
| Groundwater Ordinance | Points |
| Rejected or not available | 5 |
| Only approved by the township | 4 |
| Approved by the Agency and township | 3 |

vi) Facilities with less than the TACO Tier II level of solvent contamination (S6)

Facilities with higher than the TACO Tier I level but less than Tier II level of solvent contamination (i.e., Tier I for PCE & TCE ≥ 60 ppb for Class I and 300 ppb for Class II)

|  |  |
| --- | --- |
| Groundwater Ordinance | Points |
| Rejected or not available | 5 |
| Only approved by the township | 4 |
| Approved by the Agency and township | 3 |

G) The highest ranked claims will receive priority funding, subject to an analysis of the claimant's ability to pay for remediation costs that are anticipated to exceed the Fund's maximum benefit cap.

4) Ability to Pay Remediation Costs

A) The final step in the prioritization process is to analyze each claimant's ability to pay for remedial action costs that are anticipated to exceed the Fund's maximum benefit cap for the facility. This analysis will be done at the completion of the remedial action plan or, in the case of substantial soil and groundwater contamination, at the completion of the focused site investigation.

B) If it is apparent that the cost of remedial action will exceed the benefits available to an eligible drycleaning facility, the Administrator will contact the claimant and ask that the claimant respond in writing as to whether it has the financial resources and is willing to expend those resources to remediate the facility.

C) If the claimant states that it chooses to remediate the facility, the following mechanisms would be deemed acceptable in order to ensure that the claimant has the necessary resources to complete the remedial action once the Fund's maximum benefits have been expended:

i) Escrow 100% of the estimated remedial action costs that will exceed the Fund's remedial benefit cap. Cash or cash equivalents, such as a certificate of deposit, marketable bonds, etc., would be acceptable for escrow; or

ii) A letter of credit from a federally insured financial institution for 100% of the estimated remedial action costs that will exceed the Fund's remedial benefit cap; or

iii) Personal or corporate guarantees for 100% of the estimated cleanup costs that will exceed the Fund's remedial benefit cap. The guarantees would need to be collateralized by liquid assets.

D) Any eligible claimant who determines that it has neither the financial resources nor the desire to spend its resources on remediation of the facility will be moved to a new and separate prioritization pool. Funding for these claims will only be made available once the cleanups have been completed on all of the other eligible claims that do not exercise these funding limitations.

5) Once a claim has been prioritized, it cannot be removed from the prioritized listing unless the claim becomes ineligible for benefits from the Fund or the claimant refuses to remediate the facility in a timely manner.

6) If the claimant does not obtain and submit to the Council cost proposals for beginning the remedial action process within 120 days after being notified that his/her remedial claim has been prioritized for funding, the claim will be removed from the prioritization list and the next highest ranked claim will be added to the list. Any claim removed from the prioritization list due to non-timely remedial action by the claimant will be included in the next prioritization pool.

h) Remedial claim benefits for a specific drycleaning facility can be transferred to a successor drycleaning facility operator or owner upon execution of a remedial benefits transfer form prescribed by the Council and signed by the original claimant and the successor claimant and approved by the Council.

i) Recordkeeping.

1) Owners and operators that submit a report, plan, budget, application for payment or any other data or document under this Part must maintain all books, records, documents and other evidence directly pertinent to the report, plan, budget, application for payment, data or document, including but not limited to all financial information and data used in the preparation or support of applications for payment. All books, records, documents and other evidence must be maintained in accordance with accepted business practices and appropriate accounting procedures and practices.

2) Owners or operators must maintain the books, records, documents and other evidence set forth in subsection (i)(1) of this Section and make them available to the Council until the latest of the following:

A) The expiration of 3 years after the date the Agency issues a No Further Remediation letter;

B) For books, records, documents or other evidence relating to an appeal, litigation or other dispute or claim, the expiration of 3 years after the date of the final disposition of the appeal, litigation or other dispute or claim; or

C) The expiration of any other applicable record retention period.

j) *Effective January 1, 2012, an active drycleaning facility that has previously received or is currently receiving reimbursement for the costs of a remedial action, as defined in the Act, shall maintain continuous financial assurance for environmental liability coverage in the amount of at least $500,000 until the earlier of January 1, 2020 or the date the Council determines the drycleaning facility is an inactive drycleaning facility. Failure to comply with this requirement will result in the revocation of the drycleaning facility's existing license and in the inability of the drycleaning facility to obtain or renew a license under Section 60 of the Act.* (Section 40(j) of the Act).

(Source: Amended at 36 Ill. Reg. 18521, effective December 13, 2012)