

1 AN ACT concerning environmental protection.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Drycleaner Environmental Response Trust
5 Fund Act is amended by changing Sections 40, 45, 60, and 65
6 as follows:

7 (415 ILCS 135/40)

8 Sec. 40. Remedial action account.

9 (a) The remedial action account is established to
10 provide reimbursement to eligible claimants for drycleaning
11 solvent investigation, remedial action planning, and remedial
12 action activities for existing drycleaning solvent
13 contamination discovered at their drycleaning facilities.

14 (b) The following persons are eligible for reimbursement
15 from the remedial action account:

16 (1) In the case of claimant who is the owner or
17 operator of an active drycleaning facility licensed by
18 the Council under this Act at the time of application for
19 remedial action benefits afforded under the Fund, the
20 claimant is only eligible for reimbursement of remedial
21 action costs incurred in connection with a release from
22 that drycleaning facility, subject to any other
23 limitations under this Act.

24 (2) In the case of a claimant who is the owner of
25 an inactive drycleaning facility and was the owner or
26 operator of the drycleaning facility when it was an
27 active drycleaning facility, the claimant is only
28 eligible for reimbursement of remedial action costs
29 incurred in connection with a release from the
30 drycleaning facility, subject to any other limitations
31 under this Act.

1 (c) An eligible claimant requesting reimbursement from
2 the remedial action account shall meet all of the following:

3 (1) The claimant demonstrates that the source of
4 the release is from the claimant's drycleaning facility.

5 (2) At the time the release was discovered by the
6 claimant, the claimant and the drycleaning facility were
7 in compliance with the Agency reporting and technical
8 operating requirements.

9 (3) The claimant reported the release in a timely
10 manner to the Agency in accordance with State law.

11 (4) The claimant applying for reimbursement has not
12 filed for bankruptcy on or after the date of his or her
13 discovery of the release.

14 (5) If the claimant is the owner or operator of an
15 active drycleaning facility, the claimant has provided to
16 the Council proof of implementation and maintenance of
17 the following pollution prevention measures:

18 (A) That all drycleaning solvent wastes
19 generated at a drycleaning facility be managed in
20 accordance with applicable State waste management
21 laws and rules.

22 (B) A prohibition on the discharge of
23 wastewater from drycleaning machines or of
24 drycleaning solvent from drycleaning operations to a
25 sanitary sewer or septic tank or to the surface or
26 in groundwater.

27 (C) That every drycleaning facility:

28 (I) install a containment dike or other
29 containment structure around each machine, ~~or~~
30 ~~item-of-equipment--or--the--entire~~ drycleaning
31 area, and portable waste container in which any
32 drycleaning solvent is utilized or stored,
33 which shall be capable of containing leaks,
34 spills, any-leak, spill, or releases release of

1 drycleaning solvent from that machine, item, or
2 area, or container. The containment dike or
3 other containment structure shall be capable of
4 at least the following:

5 (a) containing a capacity of 110% of
6 the drycleaning solvent in the largest
7 tank or vessel within the machine; and

8 (b) containing 100% of the
9 drycleaning solvent of each item of
10 equipment or drycleaning area; and

11 (c) containing 100% of the
12 drycleaning solvent of the largest
13 portable waste container or at least 10%
14 of the total volume of the portable waste
15 containers stored within the containment
16 dike or structure, whichever is greater.

17 Petroleum underground storage tank systems
18 that are upgraded in accordance with the U.S.
19 EPA upgrade standards for the tanks and related
20 pipng systems and use a leak detection system
21 approved by U.S. or Illinois EPA are exempt
22 from this secondary containment requirement;
23 and

24 (II) seal or otherwise render impervious
25 those portions of diked floor surfaces on which
26 a drycleaning solvent may leak, spill, or
27 otherwise be released.

28 (D) A requirement that all drycleaning solvent
29 shall be delivered to drycleaning facilities by
30 means of closed, direct-coupled delivery systems.

31 (6) An active drycleaning facility has maintained
32 continuous financial assurance for environmental
33 liability coverage in the amount of at least \$500,000 at
34 least since the date of award of benefits under this

1 Section or July 1, 2000, whichever is earlier.

2 (7) The release was discovered on or after July 1,
3 1997 and before July 1, 2004.

4 (d) A claimant shall submit a completed application form
5 provided by the Council. The application shall contain
6 documentation of activities, plans, and expenditures
7 associated with the eligible costs incurred in response to a
8 release of drycleaning solvent from a drycleaning facility.
9 Application for remedial action account benefits must be
10 submitted to the Council on or before June 30, 2004.

11 (e) Claimants shall be subject to the following
12 deductible requirements, unless modified pursuant to the
13 Council's authority under Section 75:

14 (1) An eligible claimant submitting a claim for an
15 active drycleaning facility is responsible for the first
16 \$5,000 of eligible investigation costs and for the first
17 \$10,000 of eligible remedial action costs incurred in
18 connection with the release from the drycleaning facility
19 and is only eligible for reimbursement for costs that
20 exceed those amounts, subject to any other limitations of
21 this Act.

22 (2) An eligible claimant submitting a claim for an
23 inactive drycleaning facility is responsible for the
24 first \$10,000 of eligible investigation costs and for the
25 first \$10,000 of eligible remedial action costs incurred
26 in connection with the release from that drycleaning
27 facility, and is only eligible for reimbursement for
28 costs that exceed those amounts, subject to any other
29 limitations of this Act.

30 (f) Claimants are subject to the following limitations
31 on reimbursement:

32 (1) Subsequent to meeting the deductible
33 requirements of subsection (e), and pursuant to the
34 requirements of Section 75, reimbursement shall not

1 exceed:

2 (A) \$160,000 per active drycleaning facility
3 for which an eligible claim is submitted during the
4 program year beginning July 1, 1999;

5 (B) \$150,000 per active drycleaning facility
6 for which an eligible claim is submitted during the
7 program year beginning July 1, 2000;

8 (C) \$140,000 per active drycleaning facility
9 for which an eligible claim is submitted during the
10 program year beginning July 1, 2001;

11 (D) \$130,000 per active drycleaning facility
12 for which an eligible claim is submitted during the
13 program year beginning July 1, 2002;

14 (E) \$120,000 per active drycleaning facility
15 for which an eligible claim is submitted during the
16 program year beginning July 1, 2003; or

17 (F) \$50,000 per inactive drycleaning facility.

18 (2) A contract in which one of the parties to the
19 contract is a claimant, for goods or services that may be
20 payable or reimbursable from the Council, is void and
21 unenforceable unless and until the Council has found that
22 the contract terms are within the range of usual and
23 customary rates for similar or equivalent goods or
24 services within this State and has found that the goods
25 or services are necessary for the claimant to comply with
26 Council standards or other applicable regulatory
27 standards.

28 (3) A claimant may appoint the Council as an agent
29 for the purposes of negotiating contracts with suppliers
30 of goods or services reimbursable by the Fund. The
31 Council may select another contractor for goods or
32 services other than the one offered by the claimant if
33 the scope of the proposed work or actual work of the
34 claimant's offered contractor does not reflect the

1 quality of workmanship required or if the costs are
2 determined to be excessive, as determined by the Council.

3 (4) The Council may require a claimant to obtain
4 and submit 3 bids and may require specific terms and
5 conditions in a contract subject to approval.

6 (5) The Council may enter into a contract or an
7 exclusive contract with the supplier of goods or services
8 required by a claimant or class of claimants, in
9 connection with an expense reimbursable from the Fund,
10 for a specified good or service at a gross maximum price
11 or fixed rate, and may limit reimbursement accordingly.

12 (6) Unless emergency conditions exist, a service
13 provider shall obtain the Council's approval of the
14 budget for the remediation work before commencing the
15 work. No expense incurred that is above the budgeted
16 amount shall be paid unless the Council approves the
17 expense prior to its being incurred. All invoices and
18 bills relating to the remediation work shall be submitted
19 with appropriate documentation, as deemed necessary by
20 the Council, not later than 30 days after the work has
21 been performed.

22 (7) Neither the Council nor an eligible claimant is
23 responsible for payment for costs incurred that have not
24 been previously approved by the Council, unless an
25 emergency exists.

26 (8) The Council may determine the usual and
27 customary costs of each item for which reimbursement may
28 be awarded under this Section. The Council may revise the
29 usual and customary costs from time to time as necessary,
30 but costs submitted for reimbursement shall be subject to
31 the rates in effect at the time the costs were incurred.

32 (9) If a claimant has pollution liability insurance
33 coverage other than coverage provided by the insurance
34 account under this Act, that coverage shall be primary.

1 Reimbursement from the remedial account shall be limited
2 to the deductible amounts under the primary coverage and
3 the amount that exceeds the policy limits of the primary
4 coverage, subject to the deductible amounts of this Act.
5 If there is a dispute between the claimant and the
6 primary insurance provider, reimbursement from the
7 remedial action account may be made to the claimant after
8 the claimant assigns all of his or her interests in the
9 insurance coverage to the Council.

10 (g) The source of funds for the remedial action account
11 shall be moneys allocated to the account by the Council
12 according to the Fund budget approved by the Council.

13 (h) A drycleaning facility will be classified as active
14 or inactive for purposes of determining benefits under this
15 Section based on the status of the facility on the date a
16 claim is filed.

17 (i) Eligible claimants shall conduct remedial action in
18 accordance with the Site Remediation Program under the
19 Environmental Protection Act and Part 740 of Title 35 of the
20 Illinois Administrative Code and the Tiered Approach to
21 Cleanup Objectives under Part 742 of Title 35 of the Illinois
22 Administrative Code.

23 (Source: P.A. 90-502, eff. 8-19-97; 91-453, eff. 8-6-99.)

24 (415 ILCS 135/45)

25 Sec. 45. Insurance account.

26 (a) The insurance account shall offer financial
27 assurance for a qualified owner or operator of a drycleaning
28 facility under the terms and conditions provided for under
29 this Section. Coverage may be provided to either the owner or
30 the operator of a drycleaning facility. The Council is not
31 required to resolve whether the owner or operator, or both,
32 are responsible for a release under the terms of an agreement
33 between the owner and operator.

1 (b) The source of funds for the insurance account shall
2 be as follows:

3 (1) Moneys appropriated to the Council or moneys
4 allocated to the insurance account by the Council
5 according to the Fund budget approved by the Council.

6 (2) Moneys collected as an insurance premium,
7 including service fees, if any.

8 (3) Investment income attributed to the insurance
9 account by the Council.

10 (c) An owner or operator may purchase coverage of up to
11 \$500,000 per drycleaning facility subject to the terms and
12 conditions under this Section and those adopted by the
13 Council. Coverage shall be limited to remedial action costs
14 associated with soil and groundwater contamination resulting
15 from a release of drycleaning solvent at an insured
16 drycleaning facility, including third-party liability for
17 soil and groundwater contamination. Coverage is not provided
18 for a release that occurred before the date of coverage.

19 (d) An owner or operator, subject to underwriting
20 requirements and terms and conditions deemed necessary and
21 convenient by the Council, may purchase insurance coverage
22 from the insurance account provided that the drycleaning
23 facility to be insured meets the following conditions:

24 (1) a site investigation designed to identify soil
25 and groundwater contamination resulting from the release
26 of a drycleaning solvent has been completed. The Council
27 shall determine if the site investigation is adequate.
28 This investigation must be completed by June 30, 2004.
29 For drycleaning facilities that apply for insurance
30 coverage ~~become-active~~ after June 30, 2004, the site
31 investigation must be completed prior to issuance of
32 insurance coverage; and

33 (2) the drycleaning facility is participating in
34 and meets all requirements of a drycleaning compliance

1 program approved by the Council.

2 (e) The annual premium for insurance coverage shall be:

3 (1) For the year July 1, 1999 through June 30,
4 2000, \$250 per drycleaning facility.

5 (2) For the year July 1, 2000 through June 30,
6 2001, \$375 per drycleaning facility.

7 (3) For the year July 1, 2001 through June 30,
8 2002, \$500 per drycleaning facility.

9 (4) For the year July 1, 2002 through June 30,
10 2003, \$625 per drycleaning facility.

11 (5) For subsequent years, an owner or operator
12 applying for coverage shall pay an annual
13 actuarially-sound insurance premium for coverage by the
14 insurance account. The Council may approve Fund coverage
15 through the payment of a premium established on an
16 actuarially-sound basis, taking into consideration the
17 risk to the insurance account presented by the insured.
18 Risk factor adjustments utilized to determine
19 actuarially-sound insurance premiums should reflect the
20 range of risk presented by the variety of drycleaning
21 systems, monitoring systems, drycleaning volume, risk
22 management practices, and other factors as determined by
23 the Council. As used in this item, "actuarially sound" is
24 not limited to Fund premium revenue equaling or exceeding
25 Fund expenditures for the general drycleaning facility
26 population. Actuarially-determined premiums shall be
27 published at least 180 days prior to the premiums
28 becoming effective.

29 (f) If coverage is purchased for any part of a year, the
30 purchaser shall pay the full annual premium. The insurance
31 premium is fully earned upon issuance of the insurance
32 policy.

33 (g) The insurance coverage shall be provided with a
34 \$10,000 deductible policy.

1 (h) A future repeal of this Section shall not terminate
2 the obligations under this Section or authority necessary to
3 administer the obligations until the obligations are
4 satisfied, including but not limited to the payment of claims
5 filed prior to the effective date of any future repeal
6 against the insurance account until moneys in the account are
7 exhausted. Upon exhaustion of the moneys in the account, any
8 remaining claims shall be invalid. If moneys remain in the
9 account following satisfaction of the obligations under this
10 Section, the remaining moneys and moneys due the account
11 shall be used to assist current insureds to obtain a viable
12 insuring mechanism as determined by the Council after public
13 notice and opportunity for comment.

14 (Source: P.A. 90-502, eff. 8-19-97; 91-453, eff. 8-6-99.)

15 (415 ILCS 135/60)

16 (Section scheduled to be repealed on January 1, 2010)

17 Sec. 60. Drycleaning facility license.

18 (a) On and after January 1, 1998, no person shall
19 operate a drycleaning facility in this State without a
20 license issued by the Council.

21 (b) The Council shall issue an initial or renewal
22 license to a drycleaning facility on submission by an
23 applicant of a completed form prescribed by the Council and
24 proof of payment of the required fee to the Department of
25 Revenue.

26 (c) The annual fees for licensure are as follows:

27 (1) \$500 for a facility that purchases 140 gallons
28 or less of chlorine-based drycleaning solvents annually
29 or 1400 gallons or less of hydrocarbon-based drycleaning
30 solvents annually.

31 (2) \$1,000 for a facility that purchases more than
32 140 gallons but less than 360 gallons of chlorine-based
33 drycleaning solvents annually or more than 1400 gallons

1 but less than 3600 gallons of hydrocarbon-based
2 drycleaning solvents annually.

3 (3) \$1,500 for a facility that purchases 360
4 gallons or more of chlorine-based drycleaning solvents
5 annually or 3600 gallons or more of hydrocarbon-based
6 drycleaning solvents annually.

7 For purpose of this subsection, the quantity of
8 drycleaning solvents purchased annually shall be determined
9 as follows:

10 (1) in the case of an initial applicant, the
11 quantity of drycleaning solvents that the applicant
12 estimates will be used during his or her initial license
13 year. A fee assessed under this subdivision is subject
14 to audited adjustment for that year; or

15 (2) in the case of a renewal applicant, the
16 quantity of drycleaning solvents actually used in the
17 preceding license year.

18 The Council may adjust licensing fees annually based on
19 the published Consumer Price Index - All Urban Consumers
20 ("CPI-U") or as otherwise determined by the Council.

21 (d) A license issued under this Section shall expire one
22 year after the date of issuance and may be renewed on
23 reapplication to the Council and submission of proof of
24 payment of the appropriate fee to the Department of Revenue
25 in accordance with subsections (c) and (e). At least 30 days
26 before payment of a renewal licensing fee is due, the Council
27 shall attempt to:

28 (1) notify the operator of each licensed
29 drycleaning facility concerning the requirements of this
30 Section; and

31 (2) submit a license fee payment form to the
32 licensed operator of each drycleaning facility.

33 (e) An operator of a drycleaning facility shall submit
34 the appropriate application form provided by the Council with

1 the license fee in the form of cash or guaranteed remittance
2 to the Department of Revenue. The license fee payment form
3 and the actual license fee payment shall be administered by
4 the Department of Revenue under rules adopted by that
5 Department.

6 (f) The Department of Revenue shall issue a proof of
7 payment receipt to each operator of a drycleaning facility
8 who has paid the appropriate fee in cash or by guaranteed
9 remittance. However, the Department of Revenue shall not
10 issue a proof of payment receipt to a drycleaning facility
11 that is liable to the Department of Revenue for a tax imposed
12 under this Act. The original receipt shall be presented to
13 the Council by the operator of a drycleaning facility.

14 (g) An operator of a dry cleaning facility who is
15 required to pay a license fee under this Act and fails to pay
16 the license fee when the fee is due may shall be assessed a
17 penalty of \$5 for each day after the license fee is due and
18 until the license fee is paid. The penalty shall be effective
19 for license fees due on or after July 1, 1999.

20 (h) The Council and the Department of Revenue may adopt
21 rules as necessary to administer the licensing requirements
22 of this Act.

23 (Source: P.A. 90-502, eff. 8-19-97; 91-453, eff. 8-6-99.)

24 (415 ILCS 135/65)

25 (Section scheduled to be repealed on January 1, 2010)

26 Sec. 65. Drycleaning solvent tax.

27 (a) On and after January 1, 1998, a tax is imposed upon
28 the use of drycleaning solvent by a person engaged in the
29 business of operating a drycleaning facility in this State at
30 the rate of \$3.50 per gallon of perchloroethylene or other
31 chlorinated drycleaning solvents used in drycleaning
32 operations and \$0.35 per gallon of petroleum-based
33 drycleaning solvent. The Council shall determine by rule

1 which products are chlorine-based solvents and which
2 products are petroleum-based solvents. All drycleaning
3 solvents shall be considered chlorinated solvents unless the
4 Council determines that the solvents are petroleum-based
5 drycleaning solvents subject to the lower tax.

6 (b) The tax imposed by this Act shall be collected from
7 the purchaser at the time of sale by a seller of drycleaning
8 solvents ~~doing~~ maintaining-a-place-of business in this State
9 and shall be remitted to the Department of Revenue under the
10 provisions of this Act.

11 (c) The tax imposed by this Act that is not collected by
12 a seller of drycleaning solvents shall be paid directly to
13 the Department of Revenue by the purchaser or end user who is
14 subject to the tax imposed by this Act.

15 (d) No tax shall be imposed upon the use of drycleaning
16 solvent if the drycleaning solvent will not be used in a
17 drycleaning facility or if a floor stock tax has been imposed
18 and paid on the drycleaning solvent. Prior to the purchase
19 of the solvent, the purchaser shall provide a written and
20 signed certificate to the drycleaning solvent seller stating:

- 21 (1) the name and address of the purchaser;
- 22 (2) the purchaser's signature and date of signing;
- 23 and
- 24 (3) one of the following:
 - 25 (A) that the drycleaning solvent will not be
 - 26 used in a drycleaning facility; or
 - 27 (B) that a floor stock tax has been imposed
 - 28 and paid on the drycleaning solvent.

29 A person who provides a false certification under this
30 subsection shall be liable for a civil penalty not to exceed
31 \$500 for a first violation and a civil penalty not to exceed
32 \$5,000 for a second or subsequent violation.

33 (e) On January 1, 1998, there is imposed on each
34 operator of a drycleaning facility a tax on drycleaning

1 solvent held by the operator on that date for use in a
2 drycleaning facility. The tax imposed shall be the tax that
3 would have been imposed under subsection (a) if the
4 drycleaning solvent held by the operator on that date had
5 been purchased by the operator during the first year of this
6 Act.

7 (f) On or before the 25th day of the 1st month following
8 the end of the calendar quarter, a seller of drycleaning
9 solvents who has collected a tax pursuant to this Section
10 during the previous calendar quarter, or a purchaser or end
11 user of drycleaning solvents required under subsection (c) to
12 submit the tax directly to the Department, shall file a
13 return with the Department of Revenue. The return shall be
14 filed on a form prescribed by the Department of Revenue and
15 shall contain information that the Department of Revenue
16 reasonably requires, but at a minimum will require the
17 reporting of the volume of drycleaning solvent sold to each
18 licensed drycleaner. The Department of Revenue shall report
19 quarterly to the Counsel the volume of drycleaning solvent
20 purchased for the quarter by each licensed drycleaner. Each
21 seller of drycleaning solvent ~~doing~~ ~~maintaining--a--place--of~~
22 business in this State who is required or authorized to
23 collect the tax imposed by this Act shall pay to the
24 Department the amount of the tax at the time when he or she
25 is required to file his or her return for the period during
26 which the tax was collected. Purchasers or end users
27 remitting the tax directly to the Department under subsection
28 (c) shall file a return with the Department of Revenue and
29 pay the tax so incurred by the purchaser or end user during
30 the preceding calendar quarter.

31 (g) The tax on drycleaning solvents used in drycleaning
32 facilities and the floor stock tax shall be administered by
33 Department of Revenue under rules adopted by that Department.

34 (h) On and after January 1, 1998, no person shall

1 knowingly sell or transfer drycleaning solvent to an operator
2 of a drycleaning facility that is not licensed by the Council
3 under Section 60. A person who violates this subsection is
4 liable for a civil penalty not to exceed \$500 for a first
5 violation and a civil penalty not to exceed \$5,000 for a
6 second or subsequent violation.

7 (i) The Department of Revenue may adopt rules as
8 necessary to implement this Section.

9 (Source: P.A. 90-502, eff. 8-19-97.)