

**ALABAMA DRYCLEANING ENVIRONMENTAL
RESPONSE TRUST ADVISORY BOARD
ADMINISTRATIVE CODE**

**CHAPTER 287-1-1
THE ALABAMA DRYCLEANING ENVIRONMENTAL RESPONSE TRUST FUND**

TABLE OF CONTENTS

287-1-1-.01	Definitions
287-1-1-.02	Application For Coverage Under The Drycleaning Environmental Response Trust Fund
287-1-1-.03	Administrative Guidelines For Payment From The Fund
287-1-1-.04	Approved Drycleaner Environmental Consultant, Generally
287-1-1-.05	Approval Of Consultants
287-1-1-A	Appendix A Forms

287-1-1-.01 Definitions.

Unless otherwise defined in this chapter, the definitions of terms included in Code of Ala. 1975, §22-30-3 shall be applicable to this chapter. For the purposes of this chapter, the following terms have the following meanings:

(1) ABANDONED DRYCLEANING FACILITY. Any real property premises or individual leasehold space located in this state owned by any person in which a drycleaning facility or wholesale distribution facility formerly operated; provided, however, that any owner or operator or wholesale distributor who shall have elected not to be covered by the provisions of this chapter shall not be considered a person owning or leasing such a facility for the purposes of this chapter.

(2) ADJACENT LAND OWNER. Any owner, lessor, or mortgagee of any real property onto which contamination from a drycleaning facility, abandoned drycleaning facility, or wholesale distribution facility of any owner or operator or wholesale distributor who shall have elected to be covered by the provisions of this chapter has migrated or is threatening to migrate; or any of the successors or assigns, predecessors-in-title, and successors-in-title of the foregoing.

(3) AHWMMA. The Alabama Hazardous Waste Management and Minimization Act.

(4) BOARD. The Alabama Drycleaning Environmental Response Trust Advisory Board created under Code of Ala. 1975, §22-30D-8.

(5) CONTAMINATION. The presence of drycleaning agent in soil, groundwater, surface water, or any other medium at or on a drycleaning facility, abandoned drycleaning facility, wholesale distribution facility, or any real property of any impacted third party.

(6) DEPARTMENT. The Alabama Department of Environmental Management, or any successor department or agency of the state.

(7) DIRECTOR. The Director of the Alabama Department of Environmental Management, or any successor department or agency of the state.

(8) DRYCLEANING AGENT. Any non-hydrocarbon chlorine or hydrocarbon-based formulations or products used or to be used as a primary cleaning agent in the cleaning of garments, apparel, or household fabrics at a drycleaning facility and includes, but is not limited to, perchloroethylene, also known as tetrachloroethylene, other chemicals using CAS No. 127-18-4, solvent-charged detergent, agents, glutone and any other chlorine or petroleum-based formulations or products and the substances into which any such formulations or products degrade.

(9) APPROVED DRYCLEANER ENVIRONMENTAL CONSULTANT ("ADEC"). A person or company responsible for conducting and overseeing the inspection, investigation, remediation oversight, or remediation of a Drycleaner Environmental Response Trust Fund (DERTF) site.

(10) DRYCLEANING FACILITY. A place of business, located at or on any real property premises or individual leasehold space located in this state which operates, or has operated in the past, in whole or in part, as a commercial facility for the purpose of laundering or cleaning garments, apparel, or household fabrics for the general public using any process that involves the use of drycleaning agents. The term "drycleaning facility" specifically includes: All contiguous land, structures, and other appurtenances and improvements on the land used in connection with a drycleaning facility; tuxedo rental facilities renting to the general public which conduct drycleaning operations on the premises; and "route sales," "dry stores," "stores," or other facilities located in this state which do not engage in on-site laundering or drycleaning but which have laundering or drycleaning performed off-site by any person, including the person owning the "route sales," "dry store," or "pick-up store". The following

facilities are excepted from the definition of "drycleaning facility":

(a) "stand-alone" coin-operated laundry or a coin-operated drycleaning facility.

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

(c) A facility owned or leased by the state, any county, city, town, or public or quasi-public organization of the state, any public subdivision thereof, or any agency or department thereof, or any body corporate or system of the state under the management or administration of a board of control or governing board established by the state.

(d) A facility primarily engaged in uniform service or linen supply.

(e) Prisons, hotels, motels, industrial launderers or drycleaners not providing services to the general public, hospitals, or nursing homes.

(f) Any facility owned or leased by any owner or operator who shall elect not to be covered by this chapter.

(11) FUND. The Alabama Drycleaning Environmental Response Trust Fund (DERTF) created under Code of Ala. 1975, §22-30D-5.

(12) IMPACTED THIRD PARTY. Any person who is or has been an owner, lessor, or mortgagee of real property on which is or has been located a drycleaning facility, abandoned drycleaning facility, or wholesale distribution facility or any owner or operator or wholesale distributor who has elected to be covered by this chapter or any of the successors or assigns, predecessors-in-title, and successors-in-title of the foregoing.

(13) OWNER or OPERATOR. Any person who owns or leases an active drycleaning facility and who is or has been responsible for operations at such drycleaning facility and who shall elect to be covered by this chapter.

(14) PERSON. This term includes, but is not limited to, an individual, trust, firm, joint venture, consortium, joint-stock company, corporation, partnership, association, or limited liability company. Person does not include any governmental organization.

(15) POTENTIALLY ELIGIBLE PARTY (PEP). An active drycleaning facility owner, operator, or current or prior abandoned

facility owner or operator, wholesale distribution facility or operator, or impacted third party who is potentially eligible to participate in the Alabama Drycleaning Environmental Response Trust Fund ("Fund").

(16) REGISTRATION FEE. Registration fees required to be paid pursuant to Code of Ala. 1975, §22-30D-6 by each owner or operator of any drycleaning facility operating in this state who shall elect to be covered by this chapter and by each wholesale distributor selling to drycleaning facilities in this state who shall elect to be covered by this chapter.

(17) RELEASE. Any actual spilling, pouring, overfilling, leaking, leaching, emitting, discharging, or escaping of drycleaning agents at or from a drycleaning facility or wholesale distribution facility into the soils or waters of the state.

(18) REPORTABLE QUANTITY. A known release outside of containment of a drycleaning agent in excess of the federal reporting standards.

(19) SITE. Land on which a drycleaning facility, abandoned drycleaning facility, or wholesale distribution facility is or has been physically located.

(20) SMALL BUSINESS. Any person owning or leasing any drycleaning facility, wholesale distribution facility, or abandoned drycleaning facility in this state and having a net worth of two million dollars (\$2,000,000) or less each calendar year from the time of discovery of contamination through the present.

(21) STATE. The State of Alabama.

(22) WHOLESALE DISTRIBUTION FACILITY. A place of business of a wholesale distributor located in this state or any real property premises or individual leasehold space located in this state, occupied by a wholesale distributor who shall elect to be covered by this chapter.

(23) WHOLESALE DISTRIBUTOR. Any person whose primary business is selling drycleaning agents and supplies to drycleaning facilities and who shall elect to be covered by this chapter. "Primary business" as used in this definition means the percentage of the person's gross receipts from the sale of laundry and drycleaning agents and supplies that equals or exceeds 20 percent of the total gross receipts of such person.

Author: Robert D. Tambling

Statutory Authority: Code of Ala. 1975, §§22-30D-3, 22-30D-4(c).

History: **New Rule:** March 27, 2003; effective May 1, 2003.

287-1-1-.02 Application For Coverage Under The Drycleaning Environmental Response Trust Fund.

(1) The purpose of this provision is to establish a procedure that will enable owners or operators of drycleaning facilities, abandoned drycleaning facilities, wholesale distributors, impacted third parties or adjacent landowners who are potentially eligible parties ("PEP's") to submit requests for payments to the Board for the costs of investigation, assessment, and remediation of contamination at sites reported to the Board and the Department.

(2) Applications for reimbursement by a PEP for eligible expenses under the fund shall be submitted on a form furnished by the Board. The application shall be complete, legible and accurate, and shall include the following:

(a) For Drycleaning Facilities, Abandoned Drycleaning Facilities, and Wholesale Distribution Facilities:

1. Owner or operator's legal name, complete address, and account number on file with Department of Revenue;
2. Owner or operator's telephone number;
3. Name and position of contact person;
4. Signature of sole proprietor, partner, corporate officer, or other responsible party;
5. Date of completed application;
6. The address and legal description of the site where the facility is located;
7. Name of ADEC retained by owner;
8. Certification that all costs incurred to date of request for reimbursements were expended to address drycleaner contamination;
9. Certification that all fees required by The Alabama Drycleaning Environmental Response Trust Fund Act have been paid to the Department of Revenue.

(b) For Impacted Third Parties and Adjacent Landowners:

1. Impacted third party or adjacent landowner's legal name, complete address. If known, the account number of the facility or site on file with Department of Revenue should be included;

2. Impacted third party or adjacent landowner's telephone number;
3. Name and position of contact person;
4. Signature of impacted third party or adjacent landowner;
5. Date application completed;
6. The legal description of the contaminated site;
7. Name of ADEC retained by impacted third party or landowner;
8. Certification that all fees required by The Alabama Drycleaning Environmental Response Trust Fund Act have been paid to the Department of Revenue;
9. Certification that all costs incurred to date of request for reimbursement were expended to address drycleaner contamination.

(3) All applications for reimbursement under the Fund shall include a good faith estimate of the costs that will continue to be incurred at the site for which reimbursement will be sought. Good faith estimates shall be revised from time to time as work at the site progresses in order to more definitively estimate the remaining costs to be incurred. Such estimates shall be prepared by an approved drycleaner environmental consultant.

Author: Robert D. Tambling

Statutory Authority: Code of Ala. 1975, §22-30D-5(c).

History: New Rule: Filed March 27, 2003; effective May 1, 2003.

287-1-1-.03 Administrative Guidelines For Payment From The Fund.

(1) Scope and Purpose.

(a) Consistent with the express intent of the Act, the fund shall only be used to address contamination caused by drycleaning agents occurring at or on drycleaning facilities, abandoned drycleaning facilities, wholesale distribution facilities, or real property of impacted third parties or adjacent landowners, and which has been reported to the Board and the Department. Monies from the fund shall be used only for payment for the costs of investigation, assessment, or remediation that are incurred after May 24, 2000.

(b) The trust fund shall benefit only those owners or operators, wholesale distributors, or persons owning abandoned

drycleaning facilities who shall have elected to be covered pursuant to Code of Ala. 1975, §22-30D-4. In addition, the fund shall benefit impacted third parties and adjacent landowners impacted or adjacent to drycleaning facilities or wholesale distribution facilities of such owners or operators or wholesale distributors.

(2) Upon receipt of full and complete applications for reimbursement accompanied by a good faith estimate, the Board shall make a determination of the eligibility of the PEP for coverage under the Fund.

(3) Eligibility for Coverage. In order for any owner or operator, wholesale distributor, or person owning abandoned drycleaning facilities, to be considered eligible for coverage under the Fund, the following criteria shall be met:

(a) The person requesting coverage shall have made all required payments of fees into the Fund and shall not be delinquent in any such payments;

(b) The person shall have complied (if applicable) with all performance standards required pursuant to Department regulations;

(c) The person shall have complied with all reporting requirements of the Department and the Board, including reporting of contamination;

(d) The contamination shall have been discovered before or after May 2000; provided that no payment shall be made from the Fund for costs incurred prior to May 24, 2000;

(e) The person shall have submitted to the Board a non-binding estimate of the cost of investigation, assessment, and remediation expected to be incurred at the site, divided into increments of work, based upon a schedule of projected work. Such estimate shall be revised from time to time to reflect updated information available;

(f) The person shall have retained an ADEC.

(4) Board Review and Approval of Claims. The Board shall review and approve, deny, or for good cause, defer action on claims for reimbursement, or any part thereof, submitted to the Board on behalf of any PEP. The Board shall consider and evaluate the following criteria in making a decision to approve or deny claims for reimbursement, or any part thereof, that are properly submitted to the Board:

(a) The order in which the claim for reimbursement is received by the Board;

(b) The ranking of the particular site on the Department's prioritization list;

(c) The balance of funds available in the Fund;

(d) Whether the drycleaning facility owner, operator, or current or prior abandoned facility owner or operator, wholesale distribution facility or operator has paid the registration fees required by Code of Ala. 1975, §22-30D-6.

(5) Notification of Eligibility. The Board shall notify all PEP's of approval or denial of claims for reimbursement.

(6) Limitation of Expenditures.

(a) The Board shall not expend in excess of two hundred fifty thousand dollars (\$250,000) from the fund per fiscal year for the costs of investigation, assessment, and remediation of contamination at any particular site unless such expenditure is required to avoid an imminent and substantial endangerment to human health or the environment. The Department shall determine whether an imminent and substantial endangerment to human health or the environment exists.

(b) The Board shall not obligate a distribution of monies from the fund that at any time would result in the diminution of the fund below a balance of one million dollars (\$1,000,000) unless an emergency exists that the Department has determined constitutes an imminent and substantial endangerment to human health or the environment.

(c) In the event of an emergency as described herein, the Board shall approve the payment of reasonable response costs to remove the imminent and substantial endangerment to human health or the environment.

(7) Approval of Expenditures.

(a) The Board shall pre-approve all expenditures to be made from the Fund based upon the non-binding estimates submitted by the ADEC. No adjustments of amounts so pre-approved shall be considered without a written request from the ADEC to the Board setting forth any and all pertinent information that would justify a change in scope of work performed, schedule, or requirements.

(b) If any ADEC shall determine to proceed prior to obtaining a pre-approval from the Board, or shall proceed to deal with contamination under other State laws, all under the supervision and oversight of the Department, then in such events the ADEC shall provide to the Board certified copies of all costs incurred in connection with actual work performed at the site as approved by the Department, and the Board shall

consider such costs as eligible for reimbursement from the Fund.

(8) Board Action on Claims. Board action on any claim shall be taken by a majority of a quorum present. Incomplete claims or claims not properly submitted to the Board shall not be considered. In order for claims to be complete, the claim form shall be accompanied by copies of invoices reporting the claim for reimbursement.

(9) Certification of Claims. The claim form shall be certified by the claimant as a true and correct representation of the actual cost for which a claim has been made or work actually incurred on the site for which coverage is available under the fund. The claims should be sworn and subscribed to before a notary public at large for the State of Alabama. The invoice must be within the scope of the estimate previously submitted and a revised estimate shall be submitted with each request for reimbursement to reflect the actual cost incurred to date.

(10) Sites Excluded from Fund Coverage. The Board shall not authorize distribution of fund monies to any of the following sites or facilities:

(a) Sites that are contaminated by drycleaning agents where the contamination at such sites did not result from the operation of a drycleaning facility, abandoned drycleaning facility, or wholesale distribution facility.

(b) Sites that are not drycleaning facilities, abandoned drycleaning facilities, wholesale distribution facilities, or the real property of impacted third parties or adjacent landowners, but are contaminated by a release that resulted from drycleaning agents being transported to or from a drycleaning facility, abandoned drycleaning facility, or wholesale distribution facility.

(c) Any drycleaning facility, abandoned drycleaning facility, or wholesale distribution facility, or any property of any impacted third party or adjacent landowner that has been, or is in the future, identified by the United States Environmental Protection Agency as a federal Superfund site pursuant to 40 CFR Part 300 et seq.

(d) Any drycleaning facility, abandoned drycleaning facility, wholesale distribution facility, or any property of any impacted third party or adjacent landowner which has obtained a treatment, storage or disposal permit pursuant to the federal Resource Conservation and Recovery Act (RCRA) or AHWMA regulations.

(e) Any drycleaning facility, abandoned drycleaning facility, wholesale distribution facility, or any real property owned or

leased by any owner or operator or wholesale distributor who shall elect not to be covered by the provisions of this chapter within the time(s) required by this chapter or any real property of any impacted third party or adjacent landowner impacted by or adjacent to any such owner or operator or wholesale distributor.

(f) Any owner or operator, wholesale distributor, owner of any abandoned drycleaning facility, or impacted third party who shall fail to pay or be delinquent in payment of the registration fees require by the provisions of this chapter.

(11) Hearings; Judicial Review. Any PEP aggrieved by a decision of the Board may request a hearing before a hearing officer designated by the Board. The hearing officer will conduct the hearing on the record in accordance with the provisions of the Alabama Administrative Procedure Act (AAPA), Code of Ala. 1975, §41-22-1 et seq. In accordance with the AAPA, the hearing officer shall prepare and submit to the Board his or her Findings of Facts, Conclusions of Law, and Recommendation. The Board may accept, modify, or reject the hearing officer's recommendation, but shall render its final order not more than 30 days after receiving the recommendation of the hearing officer.

(12) No person shall file false or inaccurate information with the Board. PEPs and ADECs are required to follow the methods and procedures established by the Department and the Board for actions related to sites, including, but not limited to, release, response, initial investigation, property assessment, and remediation of sites.

Author: Robert D. Tambling

Statutory Authority: Code of Ala. 1975, §22-30D-4(c).

History: New Rule: Filed March 27, 2003; effective May 1, 2003.

Amended: June 17, 2004; effective July 22, 2004.

287-1-1-.04 **Approved Drycleaner Environmental Consultant, Generally.**

(1) ADECs and their subcontractors are not beneficiaries of this Fund and shall have no right of claim against it. Any and all claims that may arise shall be against the PEP who hired the consultant.

(2) The Board shall establish and maintain a list of approved ADECs in accordance with this provision. The ADEC list shall have three categories. There shall be one category for companies approved to perform initial investigations, a second category for companies approved to perform property assessments, and a third category for companies approved to perform property remediation work. There may be one ADEC for initial investigation, another ADEC for property assessment, and one or more ADECs for property

remediation of the site. There is nothing in these rules which prevents a company from applying for multiple ADEC categories. If an ADEC is approved for multiple categories, then the ADEC may perform services in any or all of the categories for which the ADEC is approved.

Author: Robert D. Tambling

Statutory Authority: Code of Ala. 1975, §22-30D-5(c).

History: New Rule: Filed March 27, 2003; effective May 1, 2003.

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287-1-1-.05 Approval Of Consultants.

(1) ADEC Initial Application Requirements. Any company that wishes to be approved to perform fund eligible work must submit a written application to become an ADEC with the Board according to a format determined by the Board. The application shall include the following and other information requested by the Board:

(a) Statement of organization, experience, and personnel including the following:

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

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

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

(iv) A licensed consultant that is applying to be in the remediation category shall attach a copy of the certificate documenting that the company has a valid Alabama 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 not less than five hundred thousand dollars (\$500,000);

(v) A detailed organizational chart showing only the employee names and titles who will perform work under the

DERTF and a description of the project organization relating to staff who will perform work under the DERTF. The organizational chart should state which staff will perform which services and include each person's job title. It should also note the location of all staff.

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

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

(ii) The current position, title, years of applicable experience and licenses and registrations that the person holds. If a person is listed on the organizational chart as an engineer, then that person must have an Alabama Professional Engineer License number listed on the resume. Any geologist listed on the organizational chart must have an Alabama Geologist Registration number on the resume;

(iii) A list of the sites on which the employee worked where the employee either performed facility investigations, assessments, or remediation activities related to contamination resulting from the release of dense non-aqueous liquids excluding polychlorinated biphenyls (PCBs). Describe the activities and duties performed by the employee.

(c) Proof of Satisfaction of ADEC Experience Requirements:

(i) If the company desires to be approved to perform initial investigations, provide descriptions of a minimum of three (3) different investigations performed by company staff (who will perform work under the DERTF) during the past five (5) years at facilities which use or have onsite dense non-aqueous liquids excluding PCBs.

(ii) If the company desires to be approved to perform property assessments at sites in the DERTF, provide descriptions of a minimum of three (3) different assessments of sites with contamination resulting from the release of dense non-aqueous liquids excluding PCBs in soil and/or groundwater which company staff who will perform work under the DERTF have performed in the past five (5) years.

(iii) Reserved

(iv) If the company desires to be approved to perform property remediation at sites in the DERTF, provide descriptions of a minimum of three (3) different sites where company staff who will perform work under the DERTF have performed remediation of contamination resulting from the release of dense non-aqueous liquids excluding PCBs in soil and/or groundwater in the past five (5) years.

(v) If a company desires to be approved for a combination of initial investigation, property assessment and property remediation, then submit a minimum of three (3) sites for each category for which the company is applying in compliance with the requirements set forth in subparagraphs (i) through (iv) above.

(vi) In the descriptions required by subparagraphs (i) through (v) above, state the duties performed, type of facility investigated or contaminants investigated, assessed or remediated, results of the investigation, assessment or remediation and other pertinent information which would show the company's competency in initial investigation, property assessment and/or property remediation of contamination resulting from the release of dense non-aqueous liquids excluding PCBs (be specific). Only include sites worked by personnel who will work on DERTF sites. Indicate the personnel who performed the, investigation, assessment, or remediation and describe their job duties. Limit the discussion to two (2) typed pages per site per category;

(vii) Attach letters of recommendation for two (2) sites described above from clients describing the company's investigation activities at the site and the clients' opinions of the quality of work performed by company's personnel if the company is applying to be approved for initial investigation activities. Attach letters of recommendation for two (2) sites described above from clients describing the company's assessment activities at the site and the clients' opinions of the quality of work performed by company's personnel if the company is applying to be approved for drycleaner property assessment. Attach letters of recommendation for two (2) sites described above from clients describing the company's remediation activities at the site and the clients' opinions of the quality of work performed by company's personnel if the company is applying to be approved for property remediation activities; and

(viii) If the company, its officers, its principals, or any of the employees referenced in these Rules have previously been removed from the ADEC list or have been the subject of any professional license revocation or

suspension proceeding, or have been assessed a civil penalty for violation of any environmental law in Alabama or comparable law in another jurisdiction, describe the circumstances, including the reason(s) for such action and the response action(s) taken by the company to assure there will not be similar problems in the future;

(d) A notarized statement, sworn by an executive officer or principal of the company to the effect that neither the company nor any of the company's officers, principals, and employees have been convicted of, pleaded guilty to, or pleaded nolo contendere to violating any of the following or comparable environmental law in another jurisdiction:

(i) Illegal Disposal of Hazardous Waste, Code of Ala. 1975, §22-30-19.

(ii) Violations of the Alabama Solid Waste Disposal Act, Code of Ala. 1975, §22-27-1 et seq.

(iii) Violations of the Alabama Air Pollution Control Act, Code of Ala. 1975, §22-28-22.

(iv) Violations of the Alabama Water Pollution Control Act, Code of Ala. 1975, §22-22-14.

(v) Knowingly provides false information in any written record or report required by law to be submitted to any governmental agency, Code of Ala. 1975, §13A-10-109.

(e) A notarized statement, sworn by an executive officer or principal of the company to the effect that neither the company nor any of the company's officers, principles, and employees have been convicted of, pleaded guilty to, or pleaded nolo contendere to any of the following or a comparable law in another jurisdiction:

(i) Tampering with governmental records, Code of Ala. 1975, §13A-10-12.

(ii) Any offense relating to judicial or other proceedings, Code of Ala. 1975, §13A-10-120 et seq.

(iii) Perjury and Related Offenses, Code of Ala. 1975, §13A-10-100 et. seq.

(iv) Forgery and Related Offenses, Code of Ala. 1975, §13A-9-1 et. seq.

(v) Any Offense involving Theft, Code of Ala. 1975, §13A-8-1 et. seq.

(2) ADEC Reimbursement. The ADEC will be reimbursed by the PEP. The payment requests submitted to the FUND will be paid to the PEP and will be in accordance with the reasonable rate schedule as established by the Board;

(3) ADEC Registration and License Requirements. Any company that wishes to be approved to perform Fund eligible work shall have the licenses and registrations required by the State of Alabama to perform the activities that said company proposes to perform.

(4) Reserved

(5) ADEC Approval and Listing. Companies which satisfactorily demonstrate to the Board that the company has: successfully performed significant past activities in facility investigation, assessment and/or remediation of contamination resulting from the release of dense non-aqueous liquids, excluding PCBs, through the site descriptions and letters of reference required in this Rule, has not violated environmental or other laws referenced in the sworn statement, and has completed the other requirements listed above shall be included in the next published approved consultant list in the appropriate category(ies) following receipt by the Board of the required insurance certificate. For initial evaluation to become an ADEC, it shall be assumed by the Board that if a company has sufficient experience and qualifications to perform investigation, assessment, and/or remediation activities at sites contaminated by dense non-aqueous liquids, excluding PCBs, then the company has sufficient qualifications to perform comparable activities at sites contaminated with drycleaning solvents. If the company, its officers, its principals, or any of the employees referenced in the above referenced Rules have previously been removed from the ADEC list or have been the subject of any professional license revocation or suspension proceeding, or have been assessed a civil penalty for violation of any environmental law in Alabama or comparable law in another jurisdiction, the company shall also be required to satisfactorily demonstrate to the Board that the circumstances, including the reason(s) for such actions have been corrected and will not recur.

(6) ADEC Renewal Application. Any ADEC who has not performed work covered under the Fund for a period of five years must submit a renewal application with the Board along with the following:

(a) The ADEC shall update its initial application to include a list of all current personnel who will work on DERTF sites in the upcoming year and each person's job title, job descriptions, office location, and telephone number. For employees who have not had a resume submitted to the DERTF on a previous application, and personnel who have either received or lost licenses or registrations, the ADEC shall submit resumes as described under the initial application process.

(b) A valid insurance certificate showing insurance required in these rules.

(c) For a licensed consultant in the ADEC 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 not less than five hundred thousand dollars (\$500,000).

(7) To remain on a list of approved ADECs, the company must comply as follows:

(a) Contract(s) between the ADEC and contractors/subcontractors shall contain provisions that all site workers working under authority of contractors or subcontractors shall have applicable training in accordance with the most current requirements of Title 29 Code of Federal Regulations (CFR) Section 1910.120, Standard for Hazardous Waste Operations and Emergency Response (HAZWOPER). These regulations include the following provisions for employees: training, Section 1910.120(e); medical surveillance, Section 1910.120(f); and PPE, Section 1910.120(g).

(8) The ADEC shall have a written contract with the owner or operator of the facility, or impacted third party for all Fund-eligible work performed at any Fund eligible site and the contract shall contain the following sentence conspicuously located on the first page of the contract:

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

(9) The ADEC'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 Alabama, under similar conditions, and at the time the services were rendered. The ADEC shall not knowingly, willfully, or recklessly cause the spread of contamination nor inhibit response action at the site.

(10) The ADEC will perform activities consistent with these rules and gather and maintain documentation and records necessary or required for supporting and filing claims with the DERTF Program.

(11) The ADEC shall follow methods and procedures established by the Department and the Board for initial investigation, property assessment and/or property remediation of sites. The ADEC shall collect, gather, compile and maintain documentation requested by the Department and the Board.

(12) Unless otherwise specifically approved by the Board, the following shall apply. All work done by the ADEC shall have the prior approval of a Registered Professional Engineer or Professional Geologist who is licensed/registered in the State of Alabama, and the work shall be performed as specified according to a plan approved by the Department. All plans and reports submitted to the Department shall be prepared and signed by the Registered Professional Engineer or Professional Geologist who prepares or is responsible for the plan or report. A Registered Professional Engineer or Professional Geologist shall make periodic site visits to verify whether or not the work performed is as specified by the Registered Professional Engineer or Professional Geologist, and according to a plan approved by the Department. The ADEC shall require a Registered Professional Engineer or Professional Geologist to submit a signed certification based on their personal observation and review of job site records stating whether or not the work is performed as directed by the Registered Professional Engineer or Professional Geologist, and whether the work is performed in accordance with a plan approved by the Department. If the work is not performed according to the above specifications, the certification shall include a listing of how the work performed varies from the approved plan, and/or the authorization of the Registered Professional Engineer or Professional Geologist and the specific reason for each variation. The certification for the appropriate phase of work shall be submitted with the report describing that phase of the work including, but not necessarily limited to, investigation reports, remediation reports, and as-built drawings.

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

(14) The ADEC shall have all applicable license(s) and registration(s) required in the State of Alabama and the local government where any work is performed.

(15) The ADEC shall maintain in force during the term of their performance as an approved consultant, and, if applicable, shall require its subcontractors to maintain, insurance as follows:

(a) Worker's Compensation - statutory limits and Employer's Liability - \$ 1,000,000 per occurrence.

(b) Commercial General Liability - \$2,000,000 per occurrence - \$4,000,000 aggregate.

(c) Professional Services - Professional Liability Insurance - \$2,000,000 per occurrence covering claims, damages, and

liabilities arising out of or resulting from, the ADEC's negligent acts, errors, and omissions.

(d) Automobile Liability - If the ADEC maintains and operates company vehicles, they shall maintain automobile liability insurance as follows:

Split limits of:

\$500,00 (bodily injury per person)
\$1,000,000 (bodily injury per occurrence)
\$250,000 (property damage per occurrence); or

Combined single limits for bodily injury and property damage:

\$1,000,000 (each occurrence), or

(e) If the ADEC shall maintain insurance to cover loss or damage to equipment, materials, and tools that are owned, leased, or rented by or for which the ADEC has responsibility.

(f) Additionally, the ADEC shall maintain insurance to cover loss or damage to equipment, materials, and tools that are owned, leased, or rented by or for which the ADEC has responsibility.

(g) All policies shall:

(i) Include the Board and the State of Alabama as Additional Insured, without regard to the liabilities contained in the Agreement excluding (a) and (c) of Rule 287-1-1-.05(15).

(ii) Contain a waiver of subrogation between the ADEC and the State excluding (a) and (c) of Rule 287-1-1-.05(15), and

(iii) Provide thirty (30) days notice to DERTF in the event of any non-renewal, cancellation, restriction, or modification of insurance.

(h) The ADEC shall provide certificates of such insurance or satisfactory evidence of the above-stated coverages. Obtaining and maintaining the above coverages and providing the certificates of such insurance are conditions precedent to ADEC registration and remaining on the Board's ADEC list

(16) The ADEC shall submit timely annual registration renewal applications as required by Rule 287-1-1-.05(6).

(17) The Board will provide notice that applications are to be requested by publication of a legal advertisement which will

provide interested firms with the information necessary to request instructions for preparation and submittal of applications and supporting documentation. Applications received within 45 days of the date of the legal advertisement shall be reviewed prior to establishing an ADEC list. Members of a review committee consisting of Board members and its consultant(s) shall independently evaluate applications and supporting documentation. Applicants who fail to submit their applications within 45 days of the date of legal advertisement shall not be included in the initial ADEC list. Such applicants may reapply for inclusion on subsequent ADEC lists without penalty.

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

(b) An updated ADEC list shall be published at least annually.

(18) An ADEC may be removed from the ADEC list if the ADEC, its principals, officers, or employees does any of the following:

(a) Violates these rules;

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

(c) Fails to obtain or maintain necessary licenses;

(d) Fails to maintain the required insurance;

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

(f) Files false information with the Board or the Department;

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

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

(i) Illegal Disposal of Hazardous Waste, Code of Ala. 1975, §22-30-19.

- (ii) Violations of the Alabama Solid Waste Disposal Act, Code of Ala. 1975, §22-27-1 et seq.
 - (iii) Violations of the Alabama Air Pollution Control Act, Code of Ala. 1975, §22-28-22.
 - (iv) Violations of the Alabama Water Pollution Control Act, Code of Ala. 1975, §22-22-14.
 - (v) Knowingly providing false information in any written record or report required by law to be submitted to any governmental agency, Code of Ala. 1975, §13A-10-109.
- (i) Has been convicted of, pleaded guilty, or pleaded nolo contendere to violating any of the following or a comparable law in another jurisdiction:
- (i) Tampering with governmental records, Code of Ala. 1975, §13A-10-12.
 - (ii) Any offense relating to judicial or other proceedings, Code of Ala. 1975, §13A-10-120 et seq.
 - (iii) Perjury and Related Offenses, Code of Ala. 1975, §13A-10-100 et seq.
 - (iv) Forgery and Related Offenses, Code of Ala. 1975, §13A-9-1 et seq.
 - (v) Any Offense Involving Theft, Code of Ala. 1975, §13A-8-1 et seq.
- (j) Is found to have engaged in the unauthorized practice of engineering, contracting, or geology under Code of Ala. 1975, §34-11-1, et seq., Code of Ala. 1975, §34-8-1, et seq., or Code of Ala. 1975, §34-41-1, et seq., respectively, 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 Fund, the drycleaner operator, or the impacted third party;
- (l) Files three (3) plans which are rejected by the Department as deficient;
- (m) Files plan(s) or report(s) which do not bear the appropriate signature and Alabama license/registration number of a Registered Professional Engineer or Professional Geologist;

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

(i) Failure to follow Quality Assurance and Quality Control approved in the plan;

(ii) Failure to follow the schedule for implementation approved in the plan; or

(iii) Failure to perform the activities listed or described in the plan.

(o) Fails to submit a complete renewal application by the deadline established by the Board in the format required by the Board;

(p) Performs Fund-eligible work at a DERTF site after a stop work or termination date established by the Board or the Department;

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

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

(s) Performs work in a category in which the ADEC is not approved.

(19) The process for removing a consultant from the ADEC list shall be as follows:

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

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

(c) The Boards review committee may request the company to appear at a meeting to show cause why the Board should not remove the company from the ADEC list.

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

(e) The Board shall notify the company of the review committee's decision by sending a certified letter to the last known address of the company on file with the DERTF.

(f) If the review committee determines that removal of the company from the ADEC list is warranted, then the certified letter sent by the Board to the company shall specify a date to terminate work on Fund-eligible sites. After the stop work date no activities performed by the company on any DERTF site shall be Fund reimbursable.

(g) The Board shall notify all sites which the company identified as Fund reimbursable sites of the stop work date and that the company's work after said date is not eligible for reimbursement from the DERTF Fund unless otherwise notified.

(h) If a consultant is removed from the list, other ADECs with common officers or principals shall be reviewed to determine whether to remove those ADECs with common officers or principals from the ADEC list.

(i) If a company is removed from the ADEC list, the company or a company with any of its principals or officers can not apply for a period of one (1) year from date of removal. If a company is removed as a result of a conviction or pleaded guilty to, or pleaded nolo contendere to violation of an environmental law listed in (18)(h) of this Rule or other violations listed in (18)(i) of this Rule, the company and any of its officers or principals who were convicted, pleaded guilty or pleaded nolo contendere shall not reapply to become an ADEC under the company name or any other entity.

(j) The ADEC list shall have a category that lists the number of times a company has been removed from the ADEC list. If a company, its principals, or its officers are removed from the list 3 times, then the consultant, its principals, and its officers are not eligible to reapply for addition to the ADEC list.

(20) Once the ADEC receives a stop work notice, the company/ADEC shall file no additional plans, scopes of work, or cost proposals to the DERTF unless the Board removes the stop work date.

(21) The initial application, renewal applications, plans and reports, and Fund reimbursement requests shall include the

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

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

(23) A person or company working as a subcontractor under contract to an ADEC is not required to be classified as an ADEC. The subcontractor must maintain all applicable license(s) and/or registration(s) required in the State of Alabama for work performed.

Author: Robert D. Tambling

Statutory Authority: Code of Ala. 1975, §22-30D-5(c).

History: New Rule: Filed March 27, 2003; effective May 1, 2003.

Amended: Filed June 17, 2004; effective July 22, 2004. **Amended:** Filed March 29, 2005; effective May 3, 2005.

287-1-1-A Appendix A Forms.

Instructions For Completing Payment Request Forms ADERTAB 110
Instructions For Approved Drycleaner Environmental Consultant
(ADEC) Application ADERTAB 210
Instructions For Completing Cost Proposal Forms ADERTAB 310
Approved Drycleaner Environmental Consultant (ADEC) Application
ADERTAB 200
Reasonable Rate Schedule
Payment Request Form Parts I, II And III ADERTAB Form 100
Cost Proposal Form Parts I, II, And III ADERTAB Form 300

Instructions For Completing Payment Request Forms Page 1 of 13

See Master Code for copy of form

Instructions For Completing Payment Request Forms Page 2 of 13

See Master Code for copy of form

Instructions For Completing Payment Request Forms Page 3 of 13

See Master Code for copy of form

Instructions For Completing Payment Request Forms Page 4 of 13

See Master Code for copy of form

Instructions For Completing Payment Request Forms Page 5 of 13

See Master Code for copy of form

Instructions For Completing Payment Request Forms Page 5 of 13

See Master Code for copy of form

Instructions For Completing Payment Request Forms Page 6 of 13

See Master Code for copy of form

Instructions For Completing Payment Request Forms Page 7 of 13

See Master Code for copy of form

Instructions For Completing Payment Request Forms Page 8 of 13

See Master Code for copy of form

Instructions For Completing Payment Request Forms Page 9 of 13

See Master Code for copy of form

Instructions For Completing Payment Request Forms Page 10 of 13

See Master Code for copy of form

Instructions For Completing Payment Request Forms Page 11 of 13

See Master Code for copy of form

Instructions For Completing Payment Request Forms Page 12 of 13

See Master Code for copy of form

Instructions For Completing Payment Request Forms Page 13 of 13

See Master Code for copy of form

Instructions For Approved Drycleaner Environmental Consultant
(ADEC) Application ADERTAB 210
Page 1 of 2

See Master Code for Copy of form

Instructions For Approved Drycleaner Environmental Consultant
(ADEC) Application ADERTAB 210
Page 2 of 2

See Master Code for Copy of form

Instructions for Completing Cost Proposal Forms
Page 1 of 12

See Master Code for Copy of form

Instructions for Completing Cost Proposal Forms
Page 2 of 12

See Master Code for Copy of form

Instructions for Completing Cost Proposal Forms
Page 3 of 12

See Master Code for Copy of form

Instructions for Completing Cost Proposal Forms
Page 4 of 12

See Master Code for Copy of form

Instructions for Completing Cost Proposal Forms
Page 5 of 12

See Master Code for Copy of form

Instructions for Completing Cost Proposal Forms
Page 6 of 12

See Master Code for Copy of form

Instructions for Completing Cost Proposal Forms
Page 7 of 12

See Master Code for Copy of form

Instructions for Completing Cost Proposal Forms
Page 8 of 12

See Master Code for Copy of form

Instructions for Completing Cost Proposal Forms
Page 9 of 12

See Master Code for Copy of form

Instructions for Completing Cost Proposal Forms
Page 10 of 12

See Master Code for Copy of form

Instructions for Completing Cost Proposal Forms
Page 11 of 12

See Master Code for Copy of form

Instructions for Completing Cost Proposal Forms
Page 12 of 12

See Master Code for Copy of form

Approved Drycleaner Environmental Consultant (ADEC) Application
Page 1 of 7

See Master Code for copy of form

Approved Drycleaner Environmental Consultant (ADEC) Application
Page 2 of 7

See Master Code for copy of form

Approved Drycleaner Environmental Consultant (ADEC) Application
Page 3 of 7

See Master Code for copy of form

Approved Drycleaner Environmental Consultant (ADEC) Application
Page 4 of 7

See Master Code for copy of form

Approved Drycleaner Environmental Consultant (ADEC) Application
Page 5 of 7

See Master Code for copy of form

Approved Drycleaner Environmental Consultant (ADEC) Application
Page 6 of 7

See Master Code for copy of form

Approved Drycleaner Environmental Consultant (ADEC) Application
Page 7 of 7

See Master Code for copy of form

Reasonable Rate Schedule
Page 1 of 8

See Master Code for copy of form

Reasonable Rate Schedule
Page 2 of 8

See Master Code for copy of form

Reasonable Rate Schedule
Page 3 of 8

See Master Code for copy of form

Reasonable Rate Schedule
Page 4 of 8

See Master Code for copy of form

Reasonable Rate Schedule
Page 5 of 8

See Master Code for copy of form

Reasonable Rate Schedule
Page 6 of 8

See Master Code for copy of form

Reasonable Rate Schedule
Page 7 of 8

See Master Code for copy of form

Reasonable Rate Schedule
Page 8 of 8

See Master Code for copy of form

Payment Request Form Parts I, II and III Part I
Page 1 of 8

See Master Code for Copy of form

Payment Request Form Parts I, II and III
Part I Page 2 of 8

See Master Code for Copy of form

Payment Request Form Parts I, II and III Part I
Page 3 of 8

See Master Code for Copy of form

Payment Request Form Parts I, II and III Part I
Page 4 of 8

See Master Code for Copy of form

Payment Request Form Parts I, II and III Part I
Page 5 of 8

See Master Code for Copy of form

Payment Request Form Parts I, II and III Part I
Page 6 of 8

See Master Code for Copy of form

Payment Request Form Parts I, II and III Part I
Page 7 of 8

See Master Code for Copy of form

Payment Request Form Parts I, II and III Part I
Page 8 of 8

See Master Code for Copy of form

Payment Request Form Parts I, II and III Part II
Page 1 of 3

See Master Code for Copy of form

Payment Request Form Parts I, II and III Part II
Page 2 of 3

See Master Code for Copy of form

Payment Request Form Parts I, II and III Part II
Page 3 of 3

See Master Code for Copy of form

Payment Request Form Parts I, II and III
Part III A

See Master Code for Copy of form

Payment Request Form Parts I, II and III
Part III B

See Master Code for Copy of form

Payment Request Form Parts I, II and III
Part III C

See Master Code for Copy of form

Payment Request Form Parts I, II and III
Part III D

See Master Code for Copy of form

Payment Request Form Parts I, II and III
Part III E

See Master Code for Copy of form

Payment Request Form Parts I, II and III
Part III F

See Master Code for Copy of form

Payment Request Form Parts I, II and III
Part III G

See Master Code for Copy of form

Payment Request Form Parts I, II and III
Part III H

See Master Code for Copy of form

Payment Request Form Parts I, II and III
Part III I

See Master Code for Copy of form

Payment Request Form Parts I, II and III
Part III J

See Master Code for Copy of form

Cost Proposal Form Parts I, II, and III Part I
Page 1 of 6

See Master Code for copy of form

Cost Proposal Form Parts I, II, and III
Part I Page 2 of 6

See Master Code for copy of form

Cost Proposal Form Parts I, II, and III
Part I Page 3 of 6

See Master Code for copy of form

Cost Proposal Form Parts I, II, and III
Part I Page 4 of 6

See Master Code for copy of form

Cost Proposal Form Parts I, II, and III
Part I Page 5 of 6

See Master Code for copy of form

Cost Proposal Form Parts I, II, and III
Part I Page 6 of 6

See Master Code for copy of form

Cost Proposal Form Parts I, II, and III
Part II Page 1 of 3

See Master Code for copy of form

Cost Proposal Form Parts I, II, and III
Part II Page 2 of 3

See Master Code for copy of form

Cost Proposal Form Parts I, II, and III
Part II Page 3 of 3

See Master Code for copy of form

Form A - Summary of Drycleaner Project Experience

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Cost Proposal Form Parts I, II, and III
Part III A

See Master Code for copy of form

Cost Proposal Form Parts I, II, and III
Part III B

See Master Code for copy of form

Cost Proposal Form Parts I, II, and III
Part III C

See Master Code for copy of form

Cost Proposal Form Parts I, II, and III
Part III D

See Master Code for copy of form

Cost Proposal Form Parts I, II, and III
Part III E

See Master Code for copy of form

Cost Proposal Form Parts I, II, and III
Part III F

See Master Code for copy of form

Cost Proposal Form Parts I, II, and III
Part III G

See Master Code for copy of form

Cost Proposal Form Parts I, II, and III
Part III H

See Master Code for copy of form

Cost Proposal Form Parts I, II, and III
Part III I

See Master Code for copy of form

Cost Proposal Form Parts I, II, and III
Part III J

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Author:

Statutory Authority:

History: