R.61-33, DRYCLEANING FACILITY RESTORATION

Effective May 26, 2017
(This Regulation replaces and supersedes any former regulations)

Environmental Affairs
Bureau of Land and Waste Management
S.C. Department of Health and Environmental Control
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Regulation History

Statutory Authority for R.61-33, Drycleaning Facility Restoration, is S.C. 1976 Code Section 44-56-410 et seq.

R.61-33 was added to Chapter 61 in the South Carolina Code of Regulations by publication of Document No. 2071 in S.C. State Register Volume 21, Issue 6, Part 2, effective June 27, 1997.

R.61-33 was amended by publication of Document 4705 in S.C. State Register Volume 41, Issue 5, effective May 26, 2017. This amendment replaced R.61-33 in its entirety.

61-33. Drycleaning Facility Restoration Trust Fund.

(Statutory Authority: 1976 Code Section 44-56-410, et seq.)

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33.1. Purpose and Applicability.

(A) This regulation contains procedures to implement the Drycleaning Facility Restoration Trust Fund Act and establishes the criteria for determining priority for rehabilitation of Drycleaning Facilities contaminated with Drycleaning Solvents using funds provided under this Act.

(B) Applicability:

(1) This regulation applies to dry cleaners, Persons and wholesalers that have registered with the Department of Revenue where:

(i) The owner or operator of a Site uses or has used Drycleaning Solvents for the purpose of cleaning clothing and other fabrics; or,

(ii) The Person owns, has dominion, has legal or rightful title, or has a ground lease interest in the real property where a Drycleaning Facility or Wholesale Supply Facility is or has been located; or,

(iii) The wholesaler stores or has stored Drycleaning Solvent for wholesale distribution to Drycleaning establishments.

(2) This regulation does not apply to any dry cleaner that has chosen not to participate in the Drycleaning Facility Restoration Trust Fund as specified in the Drycleaning Facility Restoration Trust Fund Act.

(3) This regulation does not apply to any dry cleaner owned by a government entity as specified in the definition of Drycleaning Facility.

(4) This regulation does not apply to textile mills, linen supply, or uniform rental facilities unless operated as a commercial Drycleaning Facility prior to July 1, 1995 as specified in Section 44-56-410(3).

(5) This regulation does not apply to Releases that occur after November 18, 1980 that are the result of gross negligence.

33.2. Definitions.

For the purpose of these regulations, the following definitions will apply.

(A) "Act" means Article 4 of the S.C. Hazardous Waste Management Act, Section 44-56-400 et seq. of the Code of Laws of 1976 as amended, known as the Drycleaning Facility Restoration Trust Fund.

(B) "Board" means the Board of the South Carolina Department of Health and Environmental Control.

(C) "Deductible" means the monies specified in the Act that the Responsible Applicant is responsible for paying.

(D) "Department" means the Department of Health and Environmental Control, including personnel thereof authorized by the Board to act on behalf of the Department or Board.

(E) "Drycleaning Facility" means a professional commercial establishment located in this State for the purpose of cleaning clothing and other fabrics utilizing a process that involves the use of drycleaning solvent. In the case of a retail establishment, the establishment is one that operates or has at some time in

the past operated in whole or in part for the purpose of cleaning clothing and other fabrics for members of the public, other drycleaning facilities, and dry drop-off facilities. In the case of a wholesale establishment, the establishment is one that operates or has at some time in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics for other drycleaning facilities or dry drop-off facilities. "Drycleaning facility" includes laundry facilities that are using or have used drycleaning solvent as part of their cleaning process but does not include textile mills, uniform rental and linen supply facilities, or drycleaning facilities owned or operated by a local, state, or federal government.

(F) "Drycleaning Solvents" means nonaqueous solvents used in the cleaning of clothing and other fabrics and includes halogenated drycleaning fluids and nonhalogenated drycleaning fluids, and their breakdown products. "Drycleaning Solvent" includes solvent that has been recycled for use at a drycleaning facility and applies only to those solvents used at a drycleaning facility or handled by a wholesale supply facility.

(G) "Emergency Site" means a site that is contaminated with Drycleaning Solvents at concentrations above an action level or the appropriate risk-based standard set by the Department:

(1) In a public or private drinking water well; or,

(2) At off-site areas with high potential for human exposure.

(H) "Existing Drycleaning Facility" means a Drycleaning Facility that started operation before November 24, 2004.

(I) "Former Drycleaning Facility" means a Drycleaning Facility that ceased to be operated as a Drycleaning Facility before July 1, 1995.

(J) "Fund" means the Drycleaning Facility Restoration Trust Fund.

(K) "Gross Negligence" means any action where normal reasonable precautions, including but not limited to the requirements of Section 44-56-480 of the Act, and including those in general widespread industrial practice, have been avoided, neglected, or deliberately omitted.

(L) "Ineligible" means a Drycleaning Facility or contaminated Site that has been permanently barred from receiving monies from the Fund and to which the moratorium does not apply pursuant to the Act.

(M) "New Drycleaning Facility" means a Drycleaning Facility that started operation on or after November 24, 2004.

(N) "Nonhalogenated Drycleaning Fluid" means any nonaqueous solvent used in a drycleaning facility that contains less than ten percent by volume of any halogenated drycleaning fluid. Nonhalogenated Drycleaning Fluid includes petroleum-based Drycleaning Solvents and their breakdown components.

(O) "Person" means an individual, partnership, corporation, association, trust, estate, receiver, company, limited liability company, or another entity or group.

(P) "Registrant" means a dry cleaner or Person who has registered with the Department of Revenue pursuant to the Act.

(Q) "Release" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of a Drycleaning Solvent.

(R) "Responsible Applicant" is defined as follows:

(1) For an existing Drycleaning Facility, the current registrant identified to the Department of Revenue on the yearly registrations forms.

(2) For an existing Drycleaning Facility that ceases to operate as such, the most recent registrant identified to the Department of Revenue at the time the operation was discontinued.

(3) For a former Drycleaning Facility, the registrant which most recently owned or operated the Drycleaning Facility.

(4) For a Drycleaning Facility that was owned by one registrant and concurrently operated by a different registrant and both are eligible for the Fund, the registrant who operated the facility.

(S) "Site" means the area where a Drycleaning Facility or Wholesale Supply Facility is or has been located and where drycleaning fluids have been deposited, stored, disposed of, or placed, or otherwise come to be located.

(T) "Wholesale Supply Facility" means a commercial establishment that supplies Drycleaning Solvents to Drycleaning Facilities.

33.3. Severability.

Should any section, paragraph, sentence, clause or phrase of this regulation be declared unconstitutional or invalid for any reason, the remainder of this regulation shall not be affected thereby.

SUBPART A
Eligibility Applications

33.4. General Provisions.

(A) In order for a Drycleaning Facility or Wholesale Supply Facility to be considered for Fund eligibility, the Responsible Applicant shall submit an application package on forms provided by the Department and consisting of:

(1) A signed application form;

(2) The findings of due diligence as defined in subsection 33.5 if this is the first application package completed by a registrant; and,

(3) A signed containment certification form.

Forms can be obtained from the DHEC website or by mail from: DHEC – Bureau of Land and Waste Management, Attn.: Drycleaning Facility Restoration Trust Fund Program, 2600 Bull Street, Columbia, SC, 29201.

(B) The Responsible Applicant is responsible for compliance with these regulations.

(C) The Responsible Applicant shall submit a separate application package for each Drycleaning Facility where an eligibility determination is desired. Deadlines for submittal of an application package are as

specified in Section 44-56-470(D). If the Department declares a Drycleaning Facility or Wholesale Supply Facility an emergency or an immediate removal site as detailed in subsections 33.14 and 33.13, the Responsible Applicant shall submit the application package for a determination of eligibility not later than forty-five days after the Department's declaration, if the package had not been submitted previously.

(D) The Department will notify the Responsible Applicant within ninety days after receipt and review of an application package. This notification will include a statement that the application package is either complete or incomplete.

(1) The submittal date of the application package shall be the date of its receipt by the Department.

(2) If the application package is incomplete, the Responsible Applicant shall be allowed up to forty-five days from the Department's request for further information. Failure to provide the information as requested shall render the application package null and void. A new application package may be submitted.

(E) Within one hundred and eighty days after initial receipt of a complete application package, the Department will notify the Responsible Applicant as to whether the Site is eligible or ineligible for the Fund. Eligibility for the Fund is contingent on:

(1) The Responsible Applicant submitting an application by the deadlines specified in Section 44-56-470 (D); and,

(2) The Responsible Applicant meeting all criteria set forth in all sections of the Act.

(F) The Department will prioritize all Sites based upon Subpart D of this regulation for which an application package has been submitted.

33.5. Due Diligence.

(A) The Responsible Applicant shall exercise due diligence to identify any and all former Drycleaning Facilities for which the Responsible Applicant was the owner, operator, Person or otherwise potentially financially liable. This identification shall extend backwards in time until either the existence of a Former Drycleaning Facility is discovered or the history of the property reasonably indicates that it could not have been used as a Former Drycleaning Facility. This due diligence shall include the following:

(1) A review of all property currently or previously owned by the applicant to determine if a Former Drycleaning Facility operated on the property prior to, or concurrent with, the Responsible Applicant ownership of the property.

(2) A review of any property previously owned by any Responsible Applicant's acquired subsidiary business to determine if a Drycleaning Facility operated on the property at any time prior to, or concurrent with, the Responsible Applicant's ownership interest of the property; and,

(3) A review of any business location currently or formerly operated by the Responsible Applicant or the Responsible Applicant's acquired subsidiary business on leased property to determine if a Former Drycleaning Facility was at any time operated by the Responsible Applicant or his acquired subsidiary business.

(B) A narrative summary including supporting documentation of all property location reviews shall be submitted with the first eligibility application.

(C) The Responsible Applicant shall have a continuing obligation to disclose the location of Former Drycleaning Facilities for which the applicant is liable. The Responsible Applicant shall submit application packages in compliance with the Act and include an addendum to the narrative summary described in subsection 33.5(B):

(1) Within ninety days of the Responsible Applicant discovering a Former Drycleaning Facility not previously identified in the narrative summary. This addendum shall include information on the newly-identified Former Drycleaning Facility and a detailed explanation of why the site was not discovered using due diligence. If the Department subsequently determines that the Former Drycleaning Facility should have been discovered using a reasonable application of due diligence, the Former Drycleaning Facility shall not be eligible for the Fund or the moratorium.

(2) Within one hundred and eighty days after the Responsible Applicant acquires new commercial property either through direct acquisition or through a new ownership interest in an acquired subsidiary business that included a Former Drycleaning Facility. Any properties not identified within one hundred and eighty days will not be eligible for the Fund.

(D) Any costs incurred by the Responsible Applicant to identify Former Drycleaning Facilities shall not be credited toward the Responsible Applicant deductible nor be eligible for reimbursement from the Fund.

SUBPART B
Moratorium for Eligible Sites

33.6. Moratorium for Eligible Sites.

In order to qualify for the moratorium on judicial or administrative actions by the Department:

(A) The Site must be determined by the Department to be eligible for the Fund under Subpart A.

(B) The dry cleaner or Person shall comply with the Act and all regulations promulgated by the Department for the proper control, management, or disposal of Drycleaning Solvents and wastes containing Drycleaning Solvents, including any regulations to restrict Releases to the atmosphere.

(C) The Releases of Drycleaning Solvent must not be the result of gross negligence after November 18, 1980.

SUBPART C
Financial Responsibility

33.7. General Provisions.

(A) The Responsible Applicant shall submit the application for eligibility and pay any deductibles as set forth in subsection 33.10 and shall be current with payment of all surcharges and fees.

(B) The Department will only negotiate with the Responsible Applicant or his/her designee.

(C) Nothing in this subsection shall preclude the Responsible Applicant from entering into contractual arrangements with any other owners/operators or Persons to obtain a share, if any, of the cost of the assessments or the deductibles from the Fund.

(D) Designation of the Responsible Applicant shall not preclude the Department from seeking judicial or administrative actions against any and all responsible parties in the event that the Site is no longer eligible for the Fund or the moratorium.

33.8. Transfer of Ownership.

(A) The seller shall notify the Department within fifteen days after ownership of any Drycleaning Facility is conveyed to a different Person or after the responsibilities under this regulation for any Former Drycleaning Facility are conveyed to a different Person.

(1) The seller shall submit this notification in writing.

(2) This notification shall include the identity of the purchaser along with a mailing address and telephone number.

(B) Once a Site is determined to be eligible for the Fund, subsequent conveyance of the ownership of the Drycleaning Facility shall not restrict the eligibility of the Site for the Fund or the moratorium.

(C) The new owner of the Drycleaning Facility shall be financially responsible for any remaining portion of the previous owner's deductible as specified in subsection 33.10.

(D) The new owner of the Drycleaning Facility shall be financially responsible for all surcharges and fees.

(E) Once a Drycleaning Facility or Wholesale Supply Facility has been determined by the Department to be ineligible for the Fund, that facility shall not become eligible for the Fund even if ownership is transferred to a different Person.

33.9. Excluded Costs.

(A) Excluded costs incurred by the Responsible Applicant shall not be accredited towards the Responsible Applicant deductible or be considered for reimbursement from the Fund.

(B) Excluded costs include but are not limited to:

(1) Compensation for any time expended by the Responsible Applicant or his employees to conduct due diligence, locate potential Release points of Drycleaning Solvents, or complete any required information or application forms.

(2) Fees paid to attorneys, accountants, or other auxiliary personnel which may be incurred as a result of negotiating with the Department.

(3) Any real or perceived loss of revenue resulting from any activities performed under these regulations.

33.10. Remitting Payments to the Fund.

(A) After the Department spends Fund money on a site, the Responsible Applicant shall pay into the Fund any unspent balance of his/her deductible up to the amount spent by the Department.

(B) The Responsible Applicant shall remit the full balance of the expended funds or shall enter into a payment plan with the Department within thirty days after notification by the Department that the funds have been used.

(C) If the Responsible Applicant chooses to enter into a payment plan, the Responsible Applicant shall make payments to the Fund on a quarterly basis.

(1) No interest shall be assessed for any outstanding balance paid in full within one year after notification by the Department.

(2) For payments extending beyond one year, interest shall be collected as a fixed-rate, simple interest on the remaining balance spent by the Department.

(3) The Department will set the annual interest rate at one and one-half times greater than the Federal Prime Interest rate in effect on the first day of July of that year. All payment plans entered into during the fiscal year July 1 through June 30 shall be set at that that rate.

33.11. Costs Incurred for Emergency Actions.

If the Department uses Fund money on an emergency site pursuant to subsection 33.14.(B) and an eligibility application is not submitted as specified in subsection 33.4, the Department shall recover to the fund the total amount expended, plus interest, from any Person responsible to the Fund for the contamination.

SUBPART D
Facility Prioritization

33.12. General Provisions.

(A) All sites will be prioritized after an application package has been received using the prioritization system described in subsection 33.15 to determine the appropriate order by which Fund monies will be expended for the most efficient reduction of risk.

(B) Publication of the prioritization list.

(1) The prioritization list will be published on an annual basis thereafter on the Department's web site.

(2) This list will be revised as sites are re-scored or added to the list.

(C) The Department will determine whether a Site is an Emergency Site or a candidate for an immediate removal action based on information obtained from any source.

(D) The Department may expend Fund monies to reduce the threat to human health for an Emergency Site before an eligibility assessment has been submitted.

(E) Once the concerns of the Emergency Site or the immediate removal site have been addressed, additional restoration will proceed at the Site based on its priority determined through use of the prioritization system.

(F) The Department may reprioritize a Site at any time to reflect new information gained on the Site.

33.13. Immediate Removal Actions.

(A) The Department may require an immediate removal action at a Site if the Department determines that:

(1) Waste containing a substantial concentration of Drycleaning Solvent that has not entered into the environment is present at the Site; and,

(2) Early removal of the waste will effectively reduce the long-term cost of restoring the Site; and,

(3) The waste can easily be removed from the Site through conventional methods of segregation, excavation, and/or pumping from containers.

(B) The Responsible Applicant shall remove the waste from the Site within 45 days after notification by the Department.

(1) The removed waste must be managed in accordance with the South Carolina Hazardous Waste Management Regulations, R.61-79 as amended.

(2) Any costs incurred by the Responsible Applicant for removal of the waste shall not be accredited towards his/her deductible or reimbursed from the Fund.

(3) Failure to remove the waste properly after due notice shall constitute gross negligence under this regulation.

(C) Immediate removal actions will not include any extraction techniques to reduce the contaminant concentrations in soil or water.

33.14. Emergency Sites.

(A) The Department will declare a Site to be an Emergency Site if:

(1) Any currently used drinking water is contaminated with Drycleaning Solvents or their breakdown products at concentrations greater than the appropriate risk based criteria and/or established standards; or,

(2) Drycleaning Solvents, or their breakdown products, are found in surface soils at concentrations greater than the appropriate risk based criteria and/or established standards for short term exposure and the Department has determined that the potential for human contact is likely.

(B) If the Department declares a Site to be an Emergency Site, money from the Fund will be allocated for the Department to reduce the risk of human exposure. Preference will be given to an action that provides long-term permanent protection without continual maintenance; however, nothing in this section shall preclude the Department from employing temporary measures or technologies to reduce the risk of exposure as deemed appropriate. The Department will notify all exposed individuals and may select the appropriate remedy after consultation with the exposed individuals.

33.15. Restoration Priority List.

(A) The prioritization system to be used when ranking sites for remedial action under this regulation will consider the following:

(1) Age and number of years of operation;

(2) Types of Drycleaning Solvent used;

(3) Location in relation to affected or potentially affected receptors; and,

(4) The likelihood of contamination migrating to the population or resources.

(B) Sites can be removed from the prioritization list for the following reasons:

(1) An assessment by the Department shows no evidence of contamination;

(2) Restoration of the site is completed; or,

(3) The Site is deemed ineligible.

SUBPART E
Restoration

33.16. General Provisions.

The goal of the restoration phase will be to alleviate any known existing exposure pathway where the clean-up goals are exceeded. The clean-up goals for each Site will be determined on a site specific basis and will be based on the appropriate risk based criteria and/or standards established by the Department.

33.17. Detailed Facility Investigation.

(A) The purpose of the detailed facility investigation is to collect data to determine the nature and extent of contamination at a Site and to support evaluation and selection of restoration alternatives. The detailed facility investigation can include, but may not be limited to, the following:

(1) Physical characteristics of the site, including important surface and subsurface features, soil types, and hydrogeology.

(2) The general characteristics of the Drycleaning Solvent waste in the source areas, including quantity, physical state, concentration, and potential mobility.

(3) Actual and potential exposure pathways including inhalation, ingestion, and dermal adsorption.

(B) A detailed facility investigation work plan will be developed. The work plan will describe the number, type, and location of samples to be collected and the type of analysis to be performed.

(C) A detailed facility investigation report shall be developed after the completion of the field work. The report will summarize the information and data collected during the investigation. In addition, the report will evaluate potential treatment alternatives that will meet the restoration objectives of subsection 33.18.

33.18. Restoration Goals and Evaluation.

(A) The Department will evaluate the restoration alternatives presented in the approved detailed facility investigation report. The selection criteria shall consider:

(1) The effectiveness of the technology to eliminate or reduce the existing and potential risks, hazards, and concerns of Drycleaning Solvents both during implementation and following completion of the selected restoration;

(2) The ability to implement a remedy as it relates to the degree of difficulty associated with construction and management of the remedy, including the technical, administrative, and logistic problems that affect the resources necessary to complete the restoration;

(3) Compliance with Federal and State environmental laws; and,

(4) The capital cost, both direct and indirect, and the annual management and maintenance costs.

(B) The Department will publish a notice of availability and a brief explanation of the proposed restoration alternatives in a major local newspaper of general circulation. The Department will present the findings of the detailed facility investigation and the proposed plan in a public meeting and will accept written comments for a period of not less than thirty calendar days after the meeting.

(C) The Department will review the public comments to determine if the proposed restoration alternative remains the most appropriate alternative for the Site.

(D) The Department will document the evaluation process, including response to public comments, and the selected restoration alternative, in the administrative record for the Site.

33.19. Restoration Implementation.

(A) The Department will review and approve a restoration design report developed by the selected contractor, which will include the actual design and provisions for the implementation of the selected restoration as documented in subsection 33.18(D).

(B) The Department will review the restoration on a periodic basis to ensure that the goals are met to eliminate or reduce the existing and potential risks, hazards, and concerns of Drycleaning Solvents in the environment. In the event that the technology does not achieve the stated goals, the Department will select another remedy after public participation as detailed in subsection 33.18.