

Office of the Revisor of Statutes

Administrative Rules



TITLE: Adopted Expedited Permanent Rules Relating to Dry Cleaner Environmental Response and Reimbursement Account

AGENCY: Pollution Control Agency

REVISOR ID: R-4411

MINNESOTA RULES: Chapter 7152



The attached rules are approved for
filing with the Secretary of State

Cindy K. Maxwell

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Assistant Deputy Revisor

182591

1.1 **Pollution Control Agency**

1.2 **Adopted Expedited Permanent Rules Relating to Dry Cleaner Environmental Response**
1.3 **and Reimbursement Account**

1.4 **7152.0100 DEFINITIONS.**

1.5 Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in
1.6 this part or, if not defined in this part, in Minnesota Statutes, sections 115B.02 and 115B.48.

1.7 Subp. 2. **Agency.** "Agency" means the Pollution Control Agency.

1.8 Subp. 3. **Applicant.** "Applicant" means an owner or operator as defined under
1.9 Minnesota Statutes, section 115B.48, subdivision 10.

1.10 Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Pollution
1.11 Control Agency.

1.12 Subp. 5. **Consultant services.** "Consultant services" means professional opinion,
1.13 advice, or analysis regarding a release.

1.14 Subp. 6. **Contractor services.** "Contractor services" means products and services that
1.15 are related to response actions and that are defined by written agreements and plans and
1.16 specifications, such as excavation, treatment of contaminated soil and groundwater, abatement
1.17 of vapors, soil borings and well installations, laboratory analysis, surveying, electrical work,
1.18 plumbing, carpentry, and equipment.

1.19 Subp. 7. **Draftsperson.** "Draftsperson" means a person with a trade school diploma
1.20 or the equivalent in computer-assisted design.

1.21 Subp. 8. **Entry-level professional.** "Entry-level professional" means a person with:

1.22 A. a college degree in agricultural engineering, chemical engineering, civil
1.23 engineering, environmental engineering, geological engineering, geotechnical engineering,
1.24 soil science, geology, hydrogeology, or a related science; or

2.1 B. at least five years' experience in performing a majority of the following
2.2 activities:

- 2.3 (1) report preparation;
- 2.4 (2) field work preparation and planning;
- 2.5 (3) supervision of field work;
- 2.6 (4) oversight of remediation system installation;
- 2.7 (5) limited data review and analysis; or
- 2.8 (6) monitoring activities.

2.9 Subp. 9. **Equipment and field supplies.** "Equipment and field supplies" means
2.10 purchased or rented equipment and supplies necessary to perform consultant services.

2.11 Subp. 10. **Field technician.** "Field technician" means a person who performs field
2.12 work.

2.13 Subp. 11. **Field work.** "Field work" means activities that are related to response actions
2.14 and that take place at a response-action site, such as sampling, installation of wells or borings,
2.15 and implementation of response actions.

2.16 Subp. 12. **Midlevel professional.** "Midlevel professional" means a person with:

2.17 A. a college degree in agricultural engineering, chemical engineering, civil
2.18 engineering, environmental engineering, geological engineering, geotechnical engineering,
2.19 soil science, geology, hydrogeology, or a related science and at least four years' experience
2.20 in performing one or more of the activities listed in item B; or

2.21 B. a graduate degree in environmental sciences and at least three years' experience
2.22 in performing one or more of the following activities:

- 2.23 (1) management of investigation and response activities;

- 3.1 (2) engineering or equipment design;
- 3.2 (3) report preparation;
- 3.3 (4) data review and analysis;
- 3.4 (5) field work planning;
- 3.5 (6) work plan preparation; or
- 3.6 (7) site inspection.

3.7 Subp. 13. **Per diem.** "Per diem" means daily charges for costs of meals and lodging
3.8 when the distance to the response-action site makes it more cost-effective to lodge overnight
3.9 near the response-action site.

3.10 Subp. 14. **Person.** "Person" means an individual, partnership, association, public or
3.11 private corporation, or other legal entity, including the United States government, an interstate
3.12 commission or other body, the state, or any agency, board, bureau, office, department, or
3.13 political subdivision of the state.

3.14 Subp. 15. **Prima facie unreasonable.** "Prima facie unreasonable" means unreasonable
3.15 absent proof by a preponderance of the evidence.

3.16 Subp. 16. **Remediation system.** "Remediation system" means a system that removes,
3.17 contains, or mitigates releases at a response-action site.

3.18 Subp. 17. **Response action.** "Response action" means an action to respond, as defined
3.19 in Minnesota Statutes, section 115B.02, subdivision 18.

3.20 Subp. 18. **Response action plan.** "Response action plan" means activities approved
3.21 by the commissioner to remove, contain, or mitigate releases at a response-action site.

3.22 Subp. 19. **Senior-level professional.** "Senior-level professional" means a person with:

4.1 A. a college degree in agricultural engineering, chemical engineering, civil
4.2 engineering, environmental engineering, geological engineering, geotechnical engineering,
4.3 soil science, geology, hydrogeology, or a related science and at least eight years' experience
4.4 in performing one or more of the activities listed in item B; or

4.5 B. a graduate degree in the environmental sciences and at least seven years'
4.6 experience in performing one or more of the following activities:

- 4.7 (1) project oversight;
- 4.8 (2) project management;
- 4.9 (3) aquifer characterization;
- 4.10 (4) review of technical reports;
- 4.11 (5) review of remedial plans; or
- 4.12 (6) data review and analysis.

4.13 Subp. 20. **Site inspection.** "Site inspection" means activities that are related to
4.14 examination or assessment of a response-action site, such as determining potential sources
4.15 of contamination, determining sampling locations, and overseeing implementation of
4.16 response actions.

4.17 Subp. 21. **Travel time.** "Travel time" means the time required to mobilize equipment
4.18 and to travel to and from the response-action site or other location necessary to provide
4.19 consultant services.

4.20 Subp. 22. **Vehicle mileage.** "Vehicle mileage" means the per-mile costs associated
4.21 with providing and using a vehicle to travel to and from the response-action site or other
4.22 location necessary to provide consultant services.

5.1 Subp. 23. **Word processing.** "Word processing" means using a computer or a
5.2 typewriter to prepare correspondence or prepare a form, report, or worksheet submitted to
5.3 the agency.

5.4 Subp. 24. **Word processor.** "Word processor" means a person who performs word
5.5 processing.

5.6 **7152.0200 REIMBURSEMENT OF COSTS.**

5.7 Subpart 1. **Applicability.** This chapter applies when an applicant submits an application
5.8 to the commissioner for reimbursement of the applicant's eligible costs as provided under
5.9 part 7152.0300 and Minnesota Statutes, section 115B.50, subdivision 2.

5.10 Subp. 2. **Conditions for reimbursement.** Under Minnesota Statutes, section 115B.50,
5.11 the commissioner must reimburse an applicant's eligible costs that are reasonable and
5.12 necessary to protect the public health or welfare or the environment under the standards
5.13 required in Minnesota Statutes, sections 115B.01 to 115B.20.

5.14 **7152.0300 ELIGIBLE COSTS.**

5.15 Subpart 1. **Costs eligible for reimbursement.** Costs associated with the following
5.16 response actions conducted under Minnesota Statutes, section 115B.50, subdivision 2, are
5.17 eligible for reimbursement from the account if the costs meet the conditions under part
5.18 7152.0200, subpart 2:

5.19 A. emergency response and initial site hazard mitigation measures necessary to
5.20 abate acute risks to human health, safety, and the environment;

5.21 B. temporary site hazard control measures such as security fencing or other
5.22 measures to limit access, temporary provision of drinking water and housing, initial abatement
5.23 of vapors, removal of free product, and other temporary measures to limit the public's
5.24 exposure;

6.1 C. investigation and source identification such as collecting and analyzing soil
6.2 samples, soil vapor, groundwater, and drinking water; providing engineering and
6.3 environmental services; and taking other actions necessary to determine the source, scope,
6.4 and extent of a release;

6.5 D. preparing and submitting reports required by the commissioner; and

6.6 E. response actions such as removal, treatment, or disposal of surface and
6.7 subsurface soil, soil vapor, or groundwater contamination, installation of a vapor mitigation
6.8 system including venting systems and vapor barriers, provision of a permanent alternative
6.9 water supply, and other actions that remove or remedy a release. Response actions must be
6.10 performed according to a response action plan approved by the commissioner.

6.11 Subp. 2. **Documentation of eligible costs.** The applicant must retain all records
6.12 necessary to document incurred costs submitted in an application for reimbursement for
6.13 seven years from the date the application is submitted to the commissioner. Among the
6.14 records required are all invoices, time records, equipment records, and receipts.

6.15 **7152.0400 INELIGIBLE COSTS.**

6.16 Subpart 1. **Generally.** Costs associated with actions conducted under Minnesota
6.17 Statutes, section 115B.50, subdivision 2, are not eligible for reimbursement from the account
6.18 when the costs are:

6.19 A. not incurred by the applicant; or

6.20 B. not reasonable according to Minnesota Statutes, section 115B.50.

6.21 Subp. 2. **Specific items.** The following specific items are not eligible for
6.22 reimbursement:

6.23 A. loss of income;

7.1 B. the applicant's attorney fees or other fees charged by an attorney or by another
7.2 person for providing legal or quasi-legal advice, filing appeals, or providing legal testimony;

7.3 C. costs for permanent relocation of residents;

7.4 D. decreased property values for the applicant's property;

7.5 E. costs for the applicant's own time spent in planning, performing, or administering
7.6 a response action;

7.7 F. costs for aesthetic or site improvements not deemed reasonable and necessary
7.8 by the commissioner to protect the public health or welfare or the environment under the
7.9 standards required in Minnesota Statutes, sections 115B.01 to 115B.20;

7.10 G. costs for work performed that is not in compliance with applicable codes;

7.11 H. per diem charges for sites less than 60 miles from an office of the person
7.12 providing consultant services or contractor services;

7.13 I. costs for repair or restoration of structures, surfaces, or land damaged by
7.14 equipment used in the response action, unless the damage was unavoidable to implement
7.15 the response action;

7.16 J. administrative costs incurred by the applicant, such as:

7.17 (1) costs for preparing applications;

7.18 (2) costs for responding to inquiries from agency staff regarding applications;

7.19 and

7.20 (3) other administrative costs;

7.21 K. costs for priority turnaround of laboratory analysis, unless requested by the
7.22 commissioner in writing;

7.23 L. late payment fees;

- 8.1 M. fees charged by property owners for access to private property;
- 8.2 N. interest costs;
- 8.3 O. costs for work done solely to facilitate a property transfer or refinance;
- 8.4 P. purchasing price of property being acquired;
- 8.5 Q. administrative costs associated with acquiring business, preparing or responding
8.6 to a request for proposal, or preparing invoices for services provided or performed;
- 8.7 R. costs for reports not submitted to the commissioner or not required by the
8.8 commissioner;
- 8.9 S. costs for work that must be redone due to workmanship that fails to meet
8.10 industry standards;
- 8.11 T. consultant markup charges;
- 8.12 U. costs reimbursed by insurance;
- 8.13 V. costs for repair, replacement, or upgrade of a facility or equipment;
- 8.14 W. investigation or response actions related to contamination not associated with
8.15 a dry cleaning operation;
- 8.16 X. costs resulting from illegal actions as provided in Minnesota Statutes, section
8.17 115B.51;
- 8.18 Y. costs for third-party review or oversight of another party's environmental work;
8.19 and
- 8.20 Z. the first \$10,000 of aggregate response-action costs, according to Minnesota
8.21 Statutes, section 115B.50, subdivision 2, paragraph (a).

9.1 **7152.0500 MAXIMUM HOURLY RATES.**

9.2 A. After the applicant accepts a consultant's or contractor's written proposal for
9.3 services at the response-action site, hourly rate charges for subsequent services performed
9.4 at the site by that consultant or contractor that exceed the hourly rates listed in the written
9.5 proposal for services at the response-action site are prima facie unreasonable.

9.6 B. Notwithstanding item A, hourly rate charges that exceed by a maximum of
9.7 five percent per year the hourly rates listed in the written proposal for services at the
9.8 response-action site are not prima facie unreasonable when at least one year has passed
9.9 since the applicant approved the proposal in writing.

9.10 C. Notwithstanding items A and B, hourly rate charges for consultant services in
9.11 excess of the following are prima facie unreasonable:

9.12 (1) senior-level professional at \$173 per hour;

9.13 (2) midlevel professional at \$128 per hour;

9.14 (3) entry-level professional at \$94 per hour;

9.15 (4) field technician at \$87 per hour;

9.16 (5) draftsperson at \$74 per hour; and

9.17 (6) word processor at \$53 per hour.

9.18 D. An hourly rate for consultant services is prima facie unreasonable when the
9.19 rate for the consultant services is higher than the level of consultant services required to
9.20 perform the task.

9.21 **7152.0600 MAXIMUM TRAVEL AND PER DIEM CHARGES.**

9.22 The cost for travel time, vehicle mileage for consultant services, or per diem is prima
9.23 facie unreasonable when the cost exceeds the amount specified in the proposal for consultant

10.1 services or contractor services or the maximum cost specified in items A to C, whichever
10.2 is less:

10.3 A. travel time has a maximum cost of the maximum hourly rate charge specified
10.4 for the traveler's level of professional expertise required for the required task to be performed;

10.5 B. for consultant services, vehicle mileage has a maximum cost of the standard
10.6 mileage rate for business established by the Internal Revenue Service; and

10.7 C. per diem has a maximum cost of \$180 per day.

10.8 **7152.0700 MAXIMUM EQUIPMENT AND FIELD SUPPLIES CHARGES.**

10.9 The costs for equipment and field supplies are prima facie unreasonable when the cost
10.10 exceeds:

10.11 A. for a disposable item, the cost to buy the item; or

10.12 B. for a reusable item, the cost to buy the item or to rent it for the amount of time
10.13 necessary to transport and use it, whichever is less.

10.14 **7152.0800 REIMBURSEMENT; ACTUAL COSTS.**

10.15 Notwithstanding parts 7152.0100 to 7152.0700, the commissioner must not reimburse
10.16 applicants for a cost that exceeds the cost for the actual hours spent by a consultant or
10.17 contractor performing the service when services are charged based on the consultant's or
10.18 contractor's time.

10.19 **7152.0900 ADJUSTMENT OF DOLLAR AMOUNTS.**

10.20 A. When the Petroleum Tank Release Compensation Board makes adjustments
10.21 to maximum charge dollar amounts according to chapter 2890 to reflect changes in the
10.22 implicit price deflator for the gross domestic product, the commissioner must use the
10.23 expedited rulemaking process in Minnesota Statutes, section 14.389, as authorized under

11.1 Minnesota Statutes, section 115B.50, subdivision 4, to reflect the same adjustments in dollar
11.2 amounts in parts 7152.0500 and 7152.0600.

11.3 B. If the Petroleum Tank Release Compensation Board does not make adjustments
11.4 as required under chapter 2890, the commissioner must determine the adjustment rate using
11.5 the process established in chapter 2890 and adjust the rates as required under item A.

11.6 **7152.1000 APPLICATION PROCESS.**

11.7 Subpart 1. **Applications.** An applicant must complete, sign, and submit a written
11.8 application to the commissioner. The application must be made on a form prescribed by the
11.9 commissioner.

11.10 Subp. 2. **Time of application; costs payable under insurance policy.** The applicant
11.11 must make reasonable efforts to collect payment from an insurer for any costs that are
11.12 payable under an applicable insurance policy before applying for reimbursement for those
11.13 costs.

11.14 Subp. 3. **Supplemental applications.** An applicant who has already submitted an
11.15 application to the commissioner for reimbursement and who has incurred additional or
11.16 continuing eligible costs may apply for reimbursement of those costs by filing a supplemental
11.17 application. An applicant may file a supplemental application only if the applicant has not
11.18 submitted the costs on a previous application.

11.19 Subp. 4. **Certification.** A person who signs an application for reimbursement must
11.20 make the following certification: "I certify under penalty of law that this document and all
11.21 attachments were prepared under my direction or supervision in accordance with a system
11.22 designed to ensure that qualified personnel properly gather and evaluate the information
11.23 submitted. Based on my inquiry of the person or persons who manage the system, or those
11.24 persons directly responsible for gathering the information, the information submitted is, to
11.25 the best of my knowledge and belief, true, accurate, and complete."

- 12.1 Subp. 5. **Resolution of denied reimbursement request.** If a request for reimbursement
12.2 is denied by the commissioner, the applicant may appeal the decision as a contested case
12.3 under Minnesota Statutes, chapter 14.

April 16, 2018

VIA EMAIL ONLY

Nancy Breems
Secretary of State, Elections Division
180 State Office Building
100 Rev Dr Martin Luther King Jr Blvd
St. Paul, Minnesota 55155-1299
official.documents@state.mn.us

**Re: *In the Matter of Expedited Proposed Rules Governing Dry Cleaner
Environmental Reimbursement Fund*
OAH 71-9003-34773; Revisor R-4411**

Dear Ms. Breems:

Enclosed for filing is an electronic copy of the above-entitled adopted rules.

Please send the agency copy of the rules to:

Mary H. Lynn
Principal Planner
Minnesota Pollution Control Agency
520 Lafayette Rd N
Saint Paul, MN 55155

If you have any questions regarding this matter, please contact Katie Lin at
(651) 361-7911 or katie.lin@state.mn.us.

Sincerely,

/s/ Lisa Armstrong

Lisa Armstrong

Enclosures

cc: Mary H. Lynn (via email)