

**Kansas Drycleaning Program**  
**Kansas Administrative Regulation No. 28-68-1 thru 28-68-9**  
July 7, 2003

**28-68-1 Definitions.** For the purposes of K.A.R. 28-68-1 through K.A.R. 28-68-10, the following terms shall be defined as follows. (a) "Applicant" means any person or governmental entity that applies to the dry-cleaning facility release trust fund.

(b) "Contaminated dry-cleaning site" has the meaning specified in K.S.A. 65-34,148, and amendments thereto.

(c) "Dry-cleaning waste" means waste, including dry-cleaning wastewater, that is generated at a dry-cleaning facility and that contains dry-cleaning solvent.

(d) "Dry-cleaning wastewater" means separator water and all other water that is generated during the dry-cleaning process and contains dry-cleaning solvents.

(e) "Existing dry-cleaning facility" means a dry-cleaning facility that was in operation on or before January 3, 1997.

(f) "Floor drain" means any opening that is less than three inches above the floor surface and leads to a septic tank, storage tank, sanitary sewer, storm sewer, or soils or waters of the state. An opening sealed with a removable seal that prevents dry-cleaning solvent and dry-cleaning wastewater from entering the opening shall not be considered a floor drain.

(g) "Hazardous waste" has the meaning specified in 40 C.F.R. part 261, subparts C and D, as in effect on July 1, 1999, and hereby adopted by reference.

(h) "New dry-cleaning facility" means a dry-cleaning facility that begins operation after January 3, 1997.

(i) "Operator" means any person who manages the daily activities or operations, or both, of a dry-cleaning facility.

(j) "Secondary containment structure" means a tank, tray, containment pallet, containment basin, a floor surface contained within a dike and the dike proper, or a similar structure that is designed to contain spills and leaks from dry-cleaning units, dry-cleaning solvent storage areas, or dry-cleaning waste storage areas. (Authorized by and implementing K.S.A. 1999 Supp. 65-34,143; effective Jan. 3, 1997; amended Dec. 22, 2000.)

**28-68-2 Registration of facilities.** (a) Each owner of any dry-cleaning facility shall annually submit to the department a separate registration for each operating dry-cleaning facility. Each registration shall be submitted on a form prepared by the department.

(b) Each owner of a new dry-cleaning facility shall submit a registration form not later than 30 days after operations begin.

(c) Each owner of any dry-cleaning facility shall submit a registration fee of \$100.00 with the registration form for each operating dry-cleaning facility. The registration fee shall cover a single calendar year. Registrations shall be submitted and fees paid on or before January 31, or the dry-cleaning facility shall be considered in violation of the Kansas dry cleaner environmental response act.

(d) Each owner of any dry-cleaning facility shall post the owner's registration number in a conspicuous location in the public area of each registered, operating dry-cleaning facility.

(e) If a change in ownership of an operating dry-cleaning facility occurs, the new owner shall submit a new registration form not later than 30 days after assuming ownership. (Authorized by K.S.A. 1999 Supp. 65-34,143; implementing K.S.A. 1999 Supp. 65-34,145; effective Jan. 3, 1997; amended Dec. 22, 2000.)

**28-68-3 Performance standards.** (a) Storage and disposal of dry-cleaning wastes.

(1) Each owner or operator of a dry-cleaning facility that generates hazardous waste shall comply with the provisions specified in K.A.R. 28-31-1 through K.A.R. 28-31-4, with the following changes:

(A) Except as provided in paragraph (a)(2), the owner or operator of each dry-cleaning facility that is a small quantity generator as specified in K.A.R. 28-31-2(e), and that accumulates up to 25 kilograms of hazardous waste, shall treat the waste as follows:

(i) Either treat or dispose of the hazardous waste in an acceptable on-site facility, or ensure delivery to an off-site hazardous waste treatment, storage, or disposal facility, or to some other waste management facility approved by the department;

(ii) comply with 40 C.F.R. part 265, subpart I, as in effect on July 1, 1999 and hereby adopted by reference, except 265.176 and 265.178;

(iii) label or clearly mark each container and each tank in which hazardous waste is accumulated or stored with the words "Hazardous Waste"; and

(iv) clearly mark each container and each tank in which hazardous waste will be accumulated and stored for more than 72 hours with the date on which each period of accumulation begins. The date marking shall be in a place visible for inspection.

(B) Dry-cleaning wastewater shall not be stored at a dry-cleaning facility for more than 60 days.

(2) Each owner or operator of an existing dry-cleaning facility that is a small quantity generator and accumulates up to 25 kilograms of hazardous waste shall comply with paragraphs (a)(1)(A)(ii) through (a)(1)(A)(iv) of this regulation.

(b) Prohibition of the discharge of dry-cleaning solvents and waste.

(1) The owner or operator of a dry-cleaning facility shall not discharge dry-cleaning solvents, dry-cleaning wastewater, or both, either directly or indirectly, into any sanitary sewer, storm sewer, or septic tank, or to the soil or waters of the state. The owner or operator of a dry-

cleaning facility shall not discharge dry-cleaning waste into any underground tank.

(2) The owner or operator of a dry-cleaning facility shall not locate floor drains within any secondary containment structure required by paragraph (e)(1) of this regulation.

(c) The owner or operator of a dry-cleaning facility may evaporate dry-cleaning wastewater at the dry-cleaning facility at which it was generated if both of the following conditions are met:

(1) The evaporation unit is a heated unit or a nonthermal unit utilizing air atomization or misting, made of materials compatible with and impervious to the dry-cleaning wastewater being evaporated; and

(2) the dry-cleaning wastewater contains no free-phase dry-cleaning solvent. For the purposes of this paragraph, "free-phase dry-cleaning solvent" means dry-cleaning solvent that is not suspended or dissolved in the dry-cleaning wastewater.

(d) Air emission standards. Each owner or operator of a dry-cleaning facility using chlorinated dry-cleaning solvents shall comply with the provisions specified in K.A.R. 28-19-720, and K.A.R. 28-19-750 through K.A.R. 28-19-753.

(e) Dikes and secondary containment structures.

(1) Installation. Each owner or operator of a dry-cleaning facility shall install a dike or other secondary containment structure around each dry-cleaning unit and around each storage area for dry-cleaning solvent, dry-cleaning waste, or both. Each secondary containment structure shall be maintained in good condition.

(2) Construction materials.

(A) The materials used to construct each secondary containment structure shall be impervious to and compatible with the dry-cleaning solvents and dry-cleaning wastes used or stored within the secondary containment structure.

(B) For any dry-cleaning unit using chlorinated dry-cleaning solvents, and any storage area for chlorinated dry-cleaning solvents, chlorinated solvent dry-cleaning wastes, or both, materials other than epoxy or steel may be used for the construction of the secondary containment structure only upon approval by the department. Departmental approval for the use of a material other than epoxy or steel shall be granted upon demonstration to the department that the material is as compatible with and impervious to dry-cleaning solvent as epoxy or steel.

(C) For any dry-cleaning unit using petroleum dry-cleaning solvents, and any storage area for petroleum dry-cleaning solvents, petroleum dry-cleaning solvent wastes, or both, materials other than epoxy, steel, or concrete may be used for the construction of the secondary containment structure only upon approval by the department. Departmental approval for the use of a material other than epoxy, steel, or concrete shall be granted upon demonstration to the department that the material is as compatible with and impervious to dry-cleaning solvent as epoxy, steel, or concrete.

(D) All sealant and all caulk used on each secondary containment structure shall be impervious to and compatible with the dry-cleaning solvent and dry-cleaning waste used or stored within the secondary containment structure.

(3) Storage capacity. Each secondary containment structure shall be capable of containing any leak, spill, or release of dry-cleaning solvents, dry-cleaning wastes, or both.

(4) Inspections. The owner or operator of each dry-cleaning facility shall inspect each secondary containment structure weekly.

(A) The owner or operator of each dry-cleaning facility shall repair each deficiency detected during an inspection not later than five calendar days after the deficiency is detected. The owner or operator may request an extension of this five-day time limit from the department.

(B) The owner or operator of each dry-cleaning facility shall keep a log of the following information and provide it to the department upon request:

(i) The dates of inspection for each secondary containment structure;

(ii) a brief description of each deficiency that is detected;

(iii) the date of repair of each deficiency; and

(iv) a brief description of each repair.

(C) Each inspection and repair log shall be kept at the dry-cleaning facility for not less than five years after the log has been completed.

(f) Delivery of solvents.

(1) Chlorinated dry-cleaning solvents. All chlorinated dry-cleaning solvents shall be delivered to dry-cleaning units and solvent storage containers by means of either of the following:

(A) A closed, direct-coupled delivery system; or

(B) a technology determined by the department to provide protection of human health and the environment equivalent to or greater than that provided by direct-coupled delivery systems.

(2) Petroleum-based solvent. All petroleum-based solvents shall be delivered to dry-cleaning units and solvent storage containers according to the requirements of K.A.R. 22-7-9.

(g) Each owner or operator of a new dry-cleaning facility shall comply with this regulation at the time operations begin and thereafter. (Authorized by and implementing K.S.A. 1999 Supp. 65-34,143; effective Jan. 3, 1997; amended May 8, 1998; amended Dec. 22, 2000.)

**28-68-4 Removal of drycleaning solvents and drycleaning wastes from closed facilities.** Each owner or operator of a drycleaning facility which has ceased operation for 45 continuous days shall remove all drycleaning solvents and drycleaning wastes from the drycleaning facility not later than 45 days after the last day of operation.

(a) Each owner or operator shall dispose of all drycleaning wastes in accordance with K.A.R. 28-68-3, subsection (a).

(b) Any owner or operator may request from the department a written extension of the 45-day time limit established in subsection (a). (Authorized by and implementing K.S.A. 1995 Supp. 65-34,143; effective Jan. 3, 1997.)

**28-68-5 Application for ranking of contaminated drycleaning site.** Any contaminated drycleaning site may be ranked by the department to establish priorities for fund expenditures based on information the department has at the department's disposal, information contained in an application to the department, or both. If an applicant desires to have a contaminated drycleaning site ranked that has not been ranked previously, the applicant shall submit to the department a completed, signed application on a form provided by the department.

(a) If the applicant is not the real property owner, the applicant shall provide proof that the real property owner has been notified of the application.

(b) If the property is leased, and the applicant is not the lessee, the applicant shall provide proof that the lessee has been notified of the application.

(c) The application shall contain the following information, as well as all other known information concerning environmental contamination at the contaminated drycleaning site;

(1) The applicant shall provide an analysis of one ground water sample which demonstrates that a release has occurred. The sample shall be taken as follows:

(A) from a water supply well;

(B) from a monitoring well;

(C) using hydraulic push probe sampling equipment; or

(D) using some other sample collection device approved by the department. Departmental approval for use of an alternate sampling device shall be granted upon demonstration that the alternate sampling device collects samples of quality equal to or greater than samples collected as described in paragraphs (A) through (C).

(E) The sample shall be collected and analyzed not more than one year prior to the day the application is received by the department. The analysis shall be performed by a laboratory which is certified for such analyses by the department. If the application is to accompany a request for reimbursement, as set forth in K.A.R. 28-68-7, the sample analysis indicating the highest level of contamination ever recorded at the site shall be submitted.

(F) With prior approval from the department, an analysis of a representative soil sample may be substituted for the groundwater sample analysis.

(2) Each applicant shall submit, if available, one of the following:

(A) a geologic well log or logs from at least one monitoring or supply well; or

(B) hydrogeologic information from the contaminated drycleaning site where the ground water sample or soil sample was collected.

(3) The applicant shall state the distance to the nearest known private domestic well, public water supply well, surface water, or other receptor.

(4) The applicant shall provide a description of the present use of the ground water in the area where the sample was collected.

(d) Any applicant may request that the department provide a written exemption from submittal of certain information set forth in subsection (c). An exemption may be granted by the department if the information:

(1) is not necessary for ranking; or

(2) is readily available to the department.

(e) The information set forth in subsection (c) shall be used by the department to rank the contaminated drycleaning site in relation to other contaminated drycleaning sites to aid in establishing priorities for fund expenditures as set forth in K.A.R. 28-68-8.

(f) The reasonable, direct costs incurred by the applicant to collect the information required by subsection (c) only shall be credited to payment of the deductible set forth in K.A.R. 28-68-6. On request by the department, the applicant shall furnish invoices or other supporting information containing sufficient detail for the department to determine that the costs were incurred to collect the information and that the costs were paid.

(g) The completed application shall be reviewed and a determination of eligibility shall be made by the department.

(h) A written notice of the determination of eligibility shall be sent by the department to the applicant as soon as a determination is made. If the site is determined ineligible for the fund, the notice of the determination shall state the reason or reasons for ineligibility. (Authorized by and implementing K.S.A. 1995 Supp. 65-34,143; effective Jan. 3, 1997.)

**28-68-6 Deductible payment.** On initiation of corrective action by the department at a contaminated dry-cleaning site, the applicant shall pay to the department the applicable deductible, minus the reasonable, direct costs incurred by the applicant to collect the application information as specified in K.A.R. 28-68-5(f). The deductible shall be \$5,000.00 for each dry-cleaning facility that has contributed to the contamination of the contaminated dry-cleaning site. Under the conditions specified in K.S.A. 65-34,148, and amendments thereto, the owner of any property that includes an existing or former dry-cleaning facility may be responsible for up to 100% of the costs of corrective action attributable to the owner. (Authorized by K.S.A. 1999 Supp. 65-34,143; implementing K.S.A. 1999 Supp. 65-34,148; effective Jan. 3, 1997; amended Dec. 22, 2000.)

**28-68-7 Reimbursement of corrective action costs.** (a) Reimbursement. Any applicant may request reimbursement from the fund for the applicant's corrective action costs, minus the deductible set forth in K.S.A. 1995 Supp. 65-34,148, subsection (i), for work performed at a contaminated drycleaning site which is determined to be eligible for the fund.

(1) Reimbursable costs shall be limited to costs for corrective action approved by the department, including direct costs incurred by the applicant. Each applicant shall substantiate reimbursable costs with contractor and subcontractor invoices or other reasonably reliable documentation.

(2) For each contaminated drycleaning site, reimbursement for corrective action costs incurred prior to July 1, 1995, shall be limited to \$100,000.00, minus the applicable deductible.

(3) Reimbursement for corrective action costs incurred on or after July 1, 1995, for any contaminated drycleaning site shall be limited, in any year, to 10 percent of the fund's income for the previous fiscal year. The applicable deductible shall be subtracted from the first-year reimbursement.

(4) Each eligible site shall receive priority for reimbursement according to the ranking of the contaminated drycleaning sites set forth in K.A.R. 28-68-8, subsection (b).

(b) Application for reimbursement.

(1) If an application for ranking has not been submitted previously to the department, the applicant shall follow the application procedure set forth in K.A.R. 28-68-5.

(2) Each applicant shall submit a signed request for reimbursement to the department on a form prepared by the department.

(3) If the applicant is not the real property owner, the applicant shall provide proof that the real property owner has been notified of the request for reimbursement.

(4) If the property is leased, and the applicant is not the lessee, the applicant shall provide proof that the lessee has been notified of the request for reimbursement.

(5) Each request for reimbursement shall contain:

(A) a copy of the notice of eligibility from the department;

(B) the name and address of the entity or entities to receive the reimbursement;

(C) a copy of all work plans generated to perform the corrective action for which reimbursement is sought;

(D) a copy of all reports generated during the corrective action;

(E) a copy of the department approval documents for corrective action at the contaminated drycleaning site; and

(F) a copy of contractor and subcontractor invoices or other reasonably reliable documentation for work performed prior to July 1, 1995, and approved by the department.

(i) Each applicant shall provide invoices or other reasonable reliable documentation with sufficient detail and supporting information to document that the costs were incurred to perform work discussed in the work plans, corrective action plan, or other work approved by the department.

(ii) Each applicant shall be required to submit to the department copies of cancelled checks, if available, showing payment for the work.

(iii) If cancelled checks are not available, each applicant shall be required to submit to the department an affidavit of expenditures and supporting documentation showing that the costs were incurred and paid to perform work approved by the department. The form for the affidavit of expenditures shall be provided by the department. (Authorized by K.S.A. 1995 Supp. 65-34,143; implementing K.S.A. 1995 Supp. 65-34,148; effective Jan. 3, 1997.)

**28-68-8 Prioritization of fund expenditure.** Each work item approved by the department for contaminated drycleaning sites shall be prioritized to ensure that money from the fund is available for essential corrective action tasks.

(a) Priority shall be given to contaminated dry-cleaning sites requiring emergency action. Emergency status may be established by the department under any of the following conditions:

(1) when a public water supply well or one or more domestic wells are contaminated, or are threatened with contamination levels above state or federal drinking water limits, and no alternative water source is readily available;

(2) when surface drinking water or a water supply intake is contaminated above acceptable limits, as defined by the department, or contamination is imminent, and no alternative water source is readily available; or

(3) when a high probability exists for direct human exposure to or contact with highly contaminated waste, soil, air, or water.

(b) Each contaminated drycleaning site not requiring emergency action shall be ranked by the department according to the risk to human health and the environment presented by the contaminants at the contaminated drycleaning site. Contaminated drycleaning sites for which an application is submitted for reimbursement of corrective action costs incurred prior to July 1, 1995 shall be ranked separately from other contaminated dry-cleaning sites.

(c) The appropriateness of corrective action alternatives for each contaminated drycleaning site shall be evaluated by the department according to the following criteria.

(1) Preference shall be given to the corrective action alternative which is most cost effective, considering both short-term and long-term costs, while adequately protecting human health and the environment.

(2) The incremental cost of the chosen corrective action shall be justified and reasonably related to the incremental risk reduction benefits of the corrective action. (Authorized by and implementing K.S.A. 1995 Supp. 65-34,143; effective Jan. 3, 1997.)



**28-68-9 Determining completion of corrective action.** A determination of the level at which corrective action shall be considered complete shall be made by the department using the following criteria.

(a) The factors used in prioritizing fund expenditure as set forth in K.S.A. 1995 Supp. 65-34,143, section (d) shall be considered by the department.

(b) The characteristics of the contaminated drycleaning site shall be evaluated by the department.

(c) State and federal drinking water standards may be considered by the department in setting corrective action levels. A determination that corrective action levels less stringent than state water quality standards will apply at a contaminated dry-cleaning site may be made by the department based on:

- (1) an evaluation of risk;
- (2) the effectiveness of available technology; and
- (3) the cost of implementation.

(d) Any other factors which the department considers relevant may be used in determining the level at which corrective action shall be considered complete. (Authorized by and implementing K.S.A. 1995 Supp. 65-34,143; effective Jan. 3, 1997.)