



# Program Basics

## Dry Cleaner Environmental Response Fund (DERF) Program

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This fact sheet summarizes the Dry Cleaner Environmental Response Fund (DERF) Program as implemented by the Wisconsin Department of Natural Resources (DNR). Created by the State Legislature under NR 169, Wis. Adm. Code, the DERF helps dry cleaners pay for environmental cleanup costs as a result of a discharge of a dry cleaning solvent at a dry cleaning facility. Cleanups conducted under this program must comply with the DNR's NR 700 cleanup rule series.

This fact sheet highlights significant components of the DERF program, including eligibility, rules and applying for reimbursement. For more details and exact rule language, please consult NR 169.

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### Eligibility

Section 292.65, Wis. Stats., states that an **owner or operator** of a dry cleaning facility is eligible for reimbursement if they comply with several provisions of the statute.

An **owner** is any one of the following:

- a person who owns, possesses, or controls any of the following:
  - ◇ a licensed dry cleaning facility;
  - ◇ a dry cleaning facility that stopped operating before October 14, 1997;
  - ◇ a dry cleaning facility that stopped operating on or after October 14, 1997, and was licensed before it stopped operating; and/or
  - ◇ receives or received money, or other direct or indirect consideration, from the operation of such facility;
- a subsidiary or parent corporation of the person specified above; and
- a person who owns property on which is located any of the following:
  - ◇ a licensed dry cleaning facility; and/or
  - ◇ a closed dry cleaning facility that was licensed and operating while the person owned the property.



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A person who owns property on which a dry cleaning facility was located, and that facility closed before October 14, 1997 (the date licensing requirements began), that person is not eligible for the DERF program. Likewise, those who purchase property on which a licensed dry cleaning facility was located, but purchased it after the facility ceased operation, are also not eligible for the program.

An **operator** is defined as:

- A person who holds the license for a dry cleaning facility.
- A subsidiary or parent corporation of the person specified above.
- A person who operated a dry cleaning facility that closed prior to October 14, 1997.

## **Entering the Program**

Chapter NR 169, Wis. Adm. Code, allows reimbursement of costs for discovering, investigating and remediating the discharge of dry cleaning solvent to the environment. The DNR Remediation and Redevelopment (RR) Program's project managers are the dry cleaner's first point of contact when seeking to participate in this program; the project managers also work with the dry cleaner throughout the cleanup process.

All discharges must be reported to the DNR as soon as they are discovered per ch. NR 706, Wis. Adm. Code. The owner/operator or his/her agent<sup>1</sup> or consultant must submit a **Potential Claim Notification Form**<sup>2</sup> (Form #4400-210) to the RR project manager prior to incurring any reimbursable costs. The Potential Claim Notification Form provides the project manager with sufficient information to confirm that the DNR was notified that a release has occurred at a particular facility. The eligibility of the applicant pursuing reimbursement is then assessed, and the applicant is sent an initial eligibility determination letter, based on the information provided on the Potential Claim Notification Form. The applicant is also informed of the status of the program's fund in the eligibility letter.

## **Deadline to Apply**

A Potential Claim Notification Form must be submitted no later than **August 30, 2008**, for investigation and cleanup costs to be eligible for reimbursement.

## **Confirming a Release has Occurred**

In order to determine whether a release has occurred at a particular facility, the owner/operator needs to submit some type of sampling data confirming the release to the environment. Chapter NR 169.05(27), Wis. Adm. Code, defines "Site Investigation

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<sup>1</sup>An owner/operator enters into a written, signed agreement with an agent, who may then act in the owner/operator's stead, including submitting reimbursement claims.

<sup>2</sup> All DERF forms can be found at <http://dnr.wi.gov/org/aw/rr/financial/dryclean.html>.

Scoping," which is an eligible activity for reimbursement from the DERF program if a release is discovered (please see box on this page for more information). If a third party (such as a neighbor) discovers contamination from a site before the dry cleaner or owner is aware of a release, a portion of the third party's discovery costs - up to \$15,000 - may be included when the dry cleaner submits a site investigation reimbursement application.

### **Site Investigation Scoping – What Is It?**

**Site investigation scoping** means a report is prepared that identifies releases from a dry cleaning facility, or ensures that the scope and the detail of a subsequent field investigation are appropriate to the complexity of the facility.

The purpose of the SI scoping is that, in documenting any releases from a dry cleaning facility, it will provide sufficient data to develop an adequate work plan for any future site investigation, if warranted, under ch. NR 716, Wis. Adm. Code. A limited number of samples per source area, per media (e.g. soil, water) will be approved as site conditions warrant to meet the objectives listed below.

The site investigation (SI) scoping document evaluates all the following items:

- ★ history of the facility, including location of dry cleaning equipment, chemical and filter storage locations;
- ★ knowledge of the type and amount of contamination;
- ★ environmental media affected or potentially affected by the contamination;
- ★ location of the facility and its proximity to other sources of contamination;
- ★ assessment of potential or known impacts to receptors; and
- ★ assessment of potential or known impacts to sensitive areas, including wetlands, outstanding resource waters and exceptional resource waters, and sites or facilities of historical or archaeological significance.

The SI scoping document also includes a map showing the site boundaries, location of source areas, utility corridors (including sewer lines), adjacent streets, receptor locations, sample locations and result of sampling.

Typically, an environmental consultant is hired to conduct site investigation scoping activities. This work does not need to be competitively bid. As long as the consultant's activities are within the Site Investigation Scoping definition and are determined by the DNR to be reasonable, an eligible applicant may hire any consultant they choose to conduct these activities.

Reimbursement for site investigation scoping activities will be made as part of the site investigation reimbursement application (please see page five for information on applying for reimbursement). The costs for site investigation scoping activities are reimbursable only if contamination from the release of a dry cleaning product at a dry cleaning facility is found.

### **Cleanup Rules**

The NR 700 Rule series contains the environmental requirements for Wisconsin (please see box on page four for more information). The rule series addresses three types of

## **Chapter NR 700 Rule Series**

- NR 700 – General Requirements
- NR 706 – Hazardous substance discharge notification and source confirmation requirements
- NR 708 – Immediate and Interim Actions
- NR 712 – Personnel qualifications for conducting environmental response actions
- NR 714 – Public information and participation
- NR 716 – Site Investigations
- NR 718 – Management of solid wastes excavated during response actions
- NR 720 – Soil Cleanup Standards
- NR 722 – Standards for selecting remedial actions
- NR 724 – Remedial and interim action design, implementation, operation, maintenance, and monitoring requirements
- NR 726 – Case Closure
- NR 728 – Enforcement
- NR 749 - Fees

response action: **immediate actions, interim actions, and remedial actions** (including site investigations).

In order for costs to be eligible for reimbursement, the NR 700 rule series must be complied with, including ch. NR 706, which requires immediate notification of a discharge of hazardous substances to the environment.

### **Cleanup Goals**

Under ch. NR 140, Wis. Adm. Code, numeric groundwater quality standards are established for cleaning up contaminated sites. The enforcement standard for perchloroethylene is 5 parts per billion.

Soil clean-up levels are established in ch. NR 720, Wis. Adm. Code (for further information on determining site-specific soil cleanup numbers, please see the following link: <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR682.pdf>).

### **DERF Funding**

The DERF receives about \$1 million dollars each fiscal year from fees on dry cleaning. Because the demand for the fund is likely to exceed the monies collected, the rule contains language for prioritizing reimbursements. Fund availability will not determine when response actions are required. To be eligible for reimbursement, dry cleaner owners/operators must submit a Potential Claim Notification Form (see previous discussion) no later than August 30, 2008.

### **Awards & Deductibles**

The maximum award for response actions is \$500,000 per facility. The following deductibles are assessed for each facility seeking reimbursement of response action costs.

<b><u>Eligible Costs</u></b>	<b><u>Deductible</u></b>
≤\$200,000	\$10,000
\$200,000 - \$400,000	\$10,000 + 8% of the amount > \$200,000
>\$400,000	\$26,000 + 10% of the amount > \$400,000

## Response Actions

**Immediate Action** – taken within a short period of time after the discharge of a hazardous substance, or after the discovery of a hazardous substance discharge. The purpose of the action is to halt the discharge, contain or remove hazardous substances, remove any contaminated environmental media, to restore the environment to the extent practicable, to minimize the harmful effects of the discharge to air, land or water, and to eliminate any imminent health and safety threat to the public or the environment.

**Interim Action** – taken to contain or stabilize a discharge of a hazardous substance in order to minimize any health and safety threats to the public or the environment, while other response actions, such as site investigations, are being taken or planned for the site or facility.

**Remedial Action** – taken to control, minimize, restore or eliminate the discharge of hazardous substances such that the hazardous substance or environmental pollution does not present an actual or potential health and safety threat to the public or the environment. Site investigation is included as a remedial action.

## Applying for Reimbursement

When appropriate milestones have been reached, owners/operators or agents may submit reimbursement applications to the DNR for review and auditing, so that a reimbursement check can be sent to them.

The DNR's Bureau for Community Financial Assistance (CFA) is responsible for auditing the applications as they are submitted by the DNR's regional project manager.

### Submitting an Application

There are several milestones at which a reimbursement application may be submitted to the DNR for reimbursement of investigation and cleanup costs (please see box above for more information).

- *Immediate and Interim actions.* A reimbursement claim can be submitted at the completion of these actions.
- *Site investigation (SI).* Up to three "interim" payments can be requested during the site investigation phase. The SI interim payments can only be requested if a change to the original SI plan is needed. Interim payments:
  - must be accompanied by a change order to the SI work plan and a progress report of work accomplished to date, and the DNR must approve these work products before the reimbursement request can be processed;
  - must be for a minimum of \$15,000; and
  - must not be requested more frequently than once per fiscal year (there is no limit on the number of change orders that may be requested within a year).

A final reimbursement may be requested after submittal and DNR approval of the completed site investigation report. Final SI reimbursement requests may be submitted at any time and are not subject to a minimum reimbursement requirement.

- *Remedial Action.* Once a remedy has been implemented, reimbursement may be requested twice in a fiscal year (Wisconsin's fiscal year runs from July 1 to June 30). For the year in which a remedial action is completed, the final application is not considered one of the two applications allowed.

### **How to Submit an Application**

The DNR provides a series of forms for completing a DERF application. These forms must be completed in full before they can be submitted to the auditor for review. If you are unsure of how to complete the forms, or if you have a question about a cost, please contact the DNR project manager prior to submitting an application, to ensure an expedited review and minimize penalties assessed against the applicant. All forms and the *Reimbursement Application Instructions and Checklist* (publication #RR-751) can be found at: <http://dnr.wi.gov/org/aw/rr/financial/dryclean.html>.

The following forms need to be included in a reimbursement request:

- Reimbursement Application (Form 4400-211);
- Bid Proposal Summary (Form 4400-212 or 4400-233);
- Reimbursement Cost Summary (Form 4400-213), or equivalent;
- Reimbursement Cost Detail Worksheet (Form 4400-214), or equivalent; and
- Verification of Taxpayer Identification Number (W-9 Form).

There are also other attachments that are necessary to complete an application request, including a map and description of the legal location of the facility, copies of invoices and all canceled checks (both sides), and accepted bid documents.

### **Recordkeeping**

All records pertaining to the project need to be kept for three years after the date of final payment. The forms listed above include the information that must be tracked while incurring costs. The box on page seven summarizes the major information that needs to be included in an application.

### **Costs to Include in Each Application**

In order to manage the funds effectively, the department requires applications to include all of the costs incurred prior to the submittal of that application. In other words, each reimbursement application needs to include all eligible response action costs paid after the date of the applicant's last application, and before or on the date of the current application. An owner or operator may not apply for reimbursement of eligible response action costs paid before the date of a prior reimbursement application to the department, unless those costs were not eligible for reimbursement at the time of the prior application.

Consultants should summarize costs incurred for each task or category contained in the original bid. When interim reimbursement requests are submitted, an estimate of the percent work complete should also be submitted.

## **Records Needed to Document Reimbursement Application**

- \* An accurate legal description of the parcel where the facility is located which corresponds to the most recent accurate parcel description filed with the Register of Deeds in the county where the parcel is located.
- \* A map showing the town, range, section and quarter-quarter section location of the site.
- \* A summary of all of costs by the major categories listed below, accompanied by a detailed listing of all eligible response action costs for which the applicant seeks reimbursement (the application forms provide a format for summarizing your costs):
  - A - Soil investigation
  - B - Soil Remedial Action
  - C - Groundwater Investigation
  - D - Groundwater Remedial Action
  - E - Air Vapor Site Investigation
  - F - Air Vapor Remedial Action
  - G - Laboratory and other analysis
  - H - Miscellaneous
- \* Invoices (or other information) documenting the costs. The invoice must describe the materials or services provided, the amount charged for the materials or services, the identity of the provider, and the dates on which the materials or services were provided. The invoice must also be coded to the eight cost summary categories listed above.
- \* Canceled checks, or other information documenting that the applicant has paid all invoiced costs.
- \* All accepted proposals (i.e. contracts) for consulting and contract services, and documentation of any changes to the original contract, including a summary of records of the contract negotiations. Services and costs detailed in the agreement must be coded to the eight major cost categories listed above.
- \* Where competitive proposals are required for selection of a consultant or contractor, a summary of all of the proposals received.
- \* Each cost must be cross referenced to the summary statement for all the following:
  1. Every proposal as required
  2. Every cost estimate, including the consultant's name and the estimate
  3. Every authorization, including the consultant's name and the amount of the authorization.

### **Costs Eligible for Reimbursement**

Applicants should be aware that all the money spent may not be eligible for reimbursement. Under NR 169.13, a complete list of eligible and ineligible costs is provided. Most costs directly related to the clean up of a contaminated site are eligible for reimbursement.

### **Penalties for Submitting Ineligible Costs**

There is a provision in the statute which states that if the owner or operator applies for reimbursement of an ineligible cost, the department shall deduct 50 percent of the amount of that cost from that person's eligible reimbursement claim. If a consultant or third party prepares a reimbursement claim for the owner/operator that contains ineligible costs, that other person shall pay an amount equal to 50 percent of the ineligible costs to the DNR.

An owner/operator or other person who is not certain whether a cost is eligible for reimbursement under Chapter NR 169 may contact their project manager for a preliminary opinion, under s. NR 169.19(1).

### **Receiving Reimbursement**

After receiving a complete application for reimbursement and DNR approval of the work accomplished, the application is audited to determine if the costs submitted are eligible for reimbursement. Depending upon the availability of funds, reimbursement usually occurs about 90 days after the application is submitted.

### **DNR Fees**

Fees for required submittals, including site investigation reports, remedial action reports and progress reports are waived for sites in the DERF program. However, owners/operators are required to pay site closure and GIS Registry fees. In addition, owners/operators may be required to pay fees if they request DNR reviews of non-required submittals (e.g. waste determinations).

### **For More Information**

A copy of any Wisconsin rule can be obtained by calling the Department of Administration Document Sales at 608-266-3358, or by downloading the rule from the Wisconsin State Legislature web site at: [www.legis.state.wi.us/rsb/code/index.html](http://www.legis.state.wi.us/rsb/code/index.html).

Information on the DNR's Remediation and Redevelopment Community Financial Assistance programs can be found at: [www.dnr.wi.gov/org/aw/rr](http://www.dnr.wi.gov/org/aw/rr) or <http://www.dnr.wi.gov/org/caer/cfa/lr/drycleaner/dryclean.html>.

This document contains information about certain state statutes and administrative rules but does not necessarily include all of the details found in the statutes and rules. Readers should consult the actual language of the statutes and rules to answer specific questions.

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