

Background and Current Status of the Dry Cleaner Environmental Fund (DERF) Program

Background

The Dry Cleaner Environmental Response Fund (DERF) Program was established by the Legislature working with the dry cleaning industry in the 1997 biennial budget. The statutes¹ provide specific details for program implementation, fee assessment and establish the Dry Cleaners Environmental Response Council, whose members are appointed by the Governor. The DNR is charged with implementing the program, while the Department of Revenue (DOR) is responsible for licensing facilities and collecting fees from facilities and solvent suppliers. Chapter NR 169, Wisconsin Administrative Code, establishes the criteria for reimbursement from the Dry Cleaner Environmental Response Fund (“Fund”). This fund was designed by the dry cleaning industry to help dry cleaners pay for environmental cleanup costs as a result of a discharge of a dry cleaning chemical at a dry cleaning facility. Cleanups conducted under this program must comply with the DNR’s rules in Chapter NR 700 to 754, Wisconsin Administrative Code.

Four staff positions are funded by the DERF program - one position in the Department of Revenue and three positions in the DNR (one position in the Bureau of Community Financial Assistance and two technical field positions in the Remediation and Redevelopment program for technical support of remediation activities). Department of Revenue is responsible for licensing dry cleaning facilities and collecting solvent fees from chemical manufacturers. The DNR is responsible for overseeing the cleanups and administering the reimbursement portion of the program.

There are approximately 280 licensed dry cleaning facilities in Wisconsin. The dry cleaner license, issued by DOR, is permanent and is transferable if the business is sold. License fees, which provide the bulk of the money in the Fund, were increased from 1.8% to 2.8% of gross dry cleaning revenues, effective Jan. 1, 2008. The remaining money in the Fund comes from solvent fees (\$5 per gallon on perchloroethylene; and \$.75 per gallon on other dry cleaning products) paid by chemical suppliers and interest. License fees for the program are authorized until 2032. The maximum reimbursement for any dry cleaner site is \$500,000.

Dry cleaners have until August 30, 2008 to enter the program. In order to enter DERF, an eligible applicant must report a contaminant release and submit a Potential Claim Notification form to the RR program. Eligible applicants include Owners and operators of closed and open dry cleaning facilities as well as property owners where a licensed dry cleaner is/has operated. Certain facilities, such as formal wear rental companies, are specifically excluded from the program.

The Governor’s Dry Cleaner Environmental Response Council advises DNR concerning the program. The Council consists of the six members appointed by the Governor for three-year terms. The members represent dry cleaning owners, wholesale distributors of dry cleaning solvent; environmental consultants; and manufacturers and sellers of dry cleaning equipment.

¹ See Sections 292.65, 299.47, 77.996 – 77.9964, and 15.347 Stats.

The Council meets biannually to discuss various aspects of the program. The Council works with the DNR to achieve consensus on all statutory language changes as well as rule-making.

Current Status

Over 160 dry cleaner sites have been accepted into DERF. Thirty-two (32) DERF sites have received closure. Approximately 60% (98) have requested reimbursement at some point.

Over \$9 million has been reimbursed to dry cleaners in the 10 year existence of DERF. Revenue to the fund has been approximately \$1.1 million/year. However, revenues in FY07 were down more than 15%. Declining revenues likely reflect structural changes in the dry cleaning industry in general. With the fee increase to 2.8%, we project revenues of \$1.5 million/year, but we will not know the actual figure for about year.

Demand for reimbursement has risen steadily and, has outstripped annual revenue for the past 3 fiscal years. (Demand in FY05 - \$1.6 million, FY06 – \$1.7 million, FY07 – \$1.9 million). Fees collected, but not spent, early in the program covered the difference between revenue and demand during these years. However, beginning in FY08, all “banked” revenue had been spent. In FY08, dry cleaners are being reimbursed as money becomes available in the fund, generally as the quarterly fee payments arrive. This has led to a backlog in reimbursing applicants. Currently, the backlog is mid-summer 2009 – that is, all anticipated FY08 and FY09 revenues have already been committed.

The DNR projects a total existing demand on DERF of \$21 million over the next 10 years, assuming 165 sites enter DERF. The fund is projected to collect enough money to cover this demand by FY23. The main problem is the backlog of payments which will result in some dry cleaners waiting several years for reimbursement. The fund does not reimburse financing costs. The dry cleaning industry agreed to an increase of 1% in fee collection starting in 2008 in an effort to address the projected cash flow problem. However, with overall declining dry cleaning revenues and increasing demand (particularly over the next 5 years or so), the increased revenues are not enough to off-set the demand.

Overall, the DERF program is working very well to address the cleanup and remediation of historical and active dry cleaning sites. The significant challenge before DERF at this time is funding a projected peak demand over the next 5 years or so. While DERF has a solid annual cash flow, it lacks sufficient cash revenues to meet the short term funding needs of the program. Without funding during this upcoming 5 year period, site owners will have to borrow funds for an extended period of time. Most dry cleaners do not have the financial ability to pay the financing cost or to obtain the financing required for the remediation of their sites without prompt reimbursement for the remediation. Without an interim funding plan, the site owners will not be able to complete their cleanups in a timely manner, if at all.