

**Dry Cleaner Environmental Response Advisory Council
6/16/98 Minutes**

Present:

Dry Cleaners Advisory Council:

Steve Plater -Platco
James Cherwinka - Wausau Chemical
Jim Fitzgerald - Herb Fitzgerald Co.
Jill Fitzgerald - Jill's Master Dry Cleaners
Jeanne Tarvin - STS
Donna Griesemer - Spic and Span, Inc.

Rule-making Advisory Group:

Robin Schmidt - RR/3
Jo Mercurio - SCR
Bob Egan - CO/8
Mark Putra - SCR - Horicon
Edwina Kavenaugh - LC/5
Joe Phillips - WFI

Others Present:

Duane Klein, - DATCP; Catherine Sanders - AERC; Kendra Bonderud - Leg Fiscal Bureau ; Kathy Curtner,- DNR

The group introduced themselves and the participants were given the opportunity to express their thoughts on the outcome they would like to achieve, and Council members were asked to remark on any perspectives they might want to share with the group. Some of the remarks included wanting a better understanding of concerns and issues, making this program viable in the future, using money wisely, keeping costs within reason to support families, furthering education on issues, concerned that dry cleaners are snowed under with expenses, expenses that are passed onto the customer, and the cost of cleanups is anticipated to be high, and keeping paperwork within reason so small dry cleaners can stay in existence.

The Council was asked to sign Oath of Office, and other paperwork was distributed (TIN form and mileage reimbursement form).

Robin summarized the program development, to date. The following highlights her comments and related discussions:

- Dry Cleaners provisions was included in 1997 budget bill - designed by the industry to serve the industry.
- DNR formed an ad-hoc team to focus on this rule - met with industry in December - discussed where want the program to be. Talked about the council. Envision the council to be policy.
- Rule-making advisory group - Joe Phillips, Don Gallo, John Robinson, Donna Griesemer and Jeanne Tarvin were the external participants on that group.
- Industry wants rule implemented soon, but wants it to be good.
- NR 700 rule series addresses comprehensive cleanups of all types of sites, including dry cleaners, agrichemical releases and underground storage tanks that may leak. This rule is to focus on reimbursement for cleanups conducted by dry cleaners. How can a reimbursement program be established to ensure efficient cleanups will be conducted?
- NR 700 developed by the DNR and finalized in 1994.
- Similar reimbursement programs exist for underground petroleum tanks and agrichemicals.
- A Process diagram was put together and distributed to show how this program would flow with the NR700 process.
- The statutes establish the framework for the program; our rules can only interpret the statutes and we cannot go beyond what the statute authorized us to do unless make statutory revisions though the upcoming biennial budget process.
- We need to establish a priority system for reimbursement, since there is anticipated to be more claims than there is money. This is somewhat caused by the requirement that the first priority for reimbursements are people with cleanups between 1991-1997. We may want to make a modification to that statutory requirement, but for now, these are the first for reimbursements.
- We met with Rule-making group 3 times. Everyone is welcome to come to the meetings. They are effective in resolving issues and deciding what would be best for the industry.
- Robin gave a brief description of other similar Councils - PECFA - policy-advisory council - overall program direction. Meet once per year; Ag. Cleanup Council is active in case management. They meet quarterly. They

approve and deny claims. The council will be disbanded in the future. They took heat off of DATCP staff with claims initially, but now it is not necessary to continue in this mode.

The Council was asked about the types of services the council could provide. Robin suggested the items that were raised at rule-making meetings, including helping manage the fund (i.e. track costs, trends, providing feedback toward the industry, etc)

There was considerable discussion raised by the Council regarding NR 700. The Council believes they are not well versed in what NR 700 is and what it means. It is perceived to be an ominous thing, in way of their objectives. They asked for an overview of NR 700. Jeanne Tarvin provided some background on why NR 700 was needed from a consultant's perspective - the industry wanted guidelines for cleanup. It is a descriptive methodology of how to cleanup sites. The NR 700 is a blueprint of what actions need to be taken to comply with statutory obligations. It is a cleanup handbook with input from advisory groups.

Jeanne expressed concern over the role of NR 700 with respect to interim actions in the dry cleaners reimbursement program, and whether dry cleaners will come forward for interim actions if they know they will get saddled with the NR 700 process. Robin commented that this wouldn't be such an issue if there were enough money for immediate reimbursement. However, from the DNR's perspective, it is unreasonable for a dry cleaner to be allowed to wait 10-15 years to determine the extent of contamination from their sites simply because that is when the money will be available.

Jim Fitzgerald suggested that dry cleaners were not bound by NR 700. That it would only saddle the program with expenses. Bob Egan commented that it is a consistency issue, whether we should treat one cleanup program different than the others? Jeanne commented that there is flexibility in the rules to incorporate concepts within NR 700. NR 700 is prescriptive yet flexible. Jim Cherwinka commented that the money should be spent on cleanup, not investigation. Dry cleaners are worried because there is not enough money to look at the sites.

Steve Plater commented that the last thing small dry cleaners are going to do is allow an investigation. It would be like throwing themselves into a costly program worth more than the value of their business. There is no incentive for these dry cleaners. The cleanup is not necessary. We should allow small dry cleaners a time frame, because they run into cost problems. The rules don't allow for "their" solutions. They break the law when they do this. The small dry cleaners won't get involved in cleanup. They will hide or sell the business if they are involved in such a huge cleanup when they can't make any money.

Robin commented that the department staff look at site specific circumstances in determining when site actions need to be taken - that the department uses enforcement discretion in negotiating schedules with responsible parties. Staff look at the history of the site, viability of the business, the severity of the problem, and the nearby populations in making these types of determinations. But if a facility is polluting the drinking water, we can't allow 10-15 years for an investigation. We'll try to be flexible, but we can't ignore the problem.

It was suggested that the Advisory Council could serve as an educational tool for dry cleaners, so they're not "ripped off" by other people. Jim Chewinka suggested that we need to get the fear out of the dry cleaner industry. Steve Plater commented that NR 700 needs to be modified for things to run smoothly. The little guy won't come forward until he has guarantees. Robin responded that we can't make guarantees, that the agency has made strides in working with its customers, and trying to negotiate reasonable schedules that keep businesses viable but yet achieve the environmental accomplishments the DNR is obligated to achieve. The reality may be that few sites come forward, but that will allow the fund to accumulate, so when sites see positive experiences and come forward, there will be more monies available for a faster reimbursement.

Robin suggested that the Council could participate in NR 700 to contribute the following:

1. Create a feedback loop. Relate dry cleaner cleanups with the NR700 process.
2. Educate the industry and be educated by the DNR about the successes and failures of cleanups.
3. Identify and overcome stumbling blocks in order to move forward with the industry.

Robin commented that it was critical to think now about what information needs to be tracked and whether the DNR has the resources to track everything that may want to be tracked. Jim Fitzgerald suggested that if you want to publicize cleanup sites, do not give out site names. He also commented that the fund contributed \$300,000 to the DNR for staff to do this, and asked what the DNR was doing with that money?

Robin responded that the DNR received 3 positions from the fund, 2 in the technical field doing site-specific work and one position to do the financial reimbursement activities. There are no rule-writing positions or program management positions, and none of the positions allocated to the DNR have yet to be filled.

Several Council members asked about getting information on past cleanups conducted by dry cleaners and seeing what technologies worked and what didn't, looking for cost-effective technologies, and which approaches are effective. There was concern that engineers are responsible if they don't do a good job, so they drill lots of holes to make sure the job is done right. Bob Egan commented that getting this information is hard to do. Cleanups are expensive. If we could control costs, we would be doing this. Jeanne Tarvin commented that one had to be careful not to look at cleanups that occurred even a few years ago, because there are a lot of advances that weren't available then from a cleanup perspective. We will be getting information on costs and technologies when the applications are submitted by owners and operators who conducted cleanups between 1991 and 1997 come in and we can disseminate that information, as appropriate.

Jeanne also commented that she is concerned with the overall philosophy that sites won't jump into the program. Mini-site investigations should be implemented because sites are getting worse. We need to find out the bad sites to take action to cleanup the highest priority sites. - Remediate vs. Control. NR 700 doesn't preclude interim action. Robin commented that while interim actions were allowed in NR 700, they were to be conducted concurrent with an NR 716 investigation. Jeanne suggested that the dry cleaners need assurances, because they can't afford to go forward. Edwina commented that we can't give assurance. If we look at a site and see that it doesn't need cleanup, then we can say they don't need action.

Robin commented that she had taken the previous interim action discussion of the rule-making advisory group to the Standards and Streamlining Team for discussion. They are willing to develop guidance for preliminary site screening, specifically for a dry cleaner site, and they helped draft a definition for the rule regarding preliminary site screening. Site geology and history affect a lot of decisions. The biggest problem is that there isn't enough money for reimbursement to get enough people participating.

Robin gave an overview of the timeline developed for this rule, with the idea that they would be ready for hearing authorization request at the September NRB meeting.

- the rules should be completed by the first week in July.
- if the NRB authorized hearings, those hearings would be held in October
- responses to comments and rule revisions based on those comments would occur after that,
- The final rules would go to the NRB in January for adoption
- the rule could be effective in March or April.

Rule revisions would likely take a minimum of 8 months to a year to complete. Modifications are done all the time, and are likely to be needed, especially with the statutory changes that are likely to be made with the next budget cycle. The idea is to get a good draft now, send it out, and let people comment on the rules. Robin commented that the Statute is fairly prescriptive. The rule is not addressing NR700, but is focused on reimbursement.

Selection of a chairperson for the Advisory Committee:

Steve Plater was appointed Chair, Donna Griesemer - vice-chair, and Jill Fitzgerald - Secretary.

Chair's responsibilities:

- conduct meetings
- set agendas (with DNR staff person)
- call meetings
- request DNR to do things
- speak on behalf of the council

Goals and Objectives of the Council

1. Want people to use rules - make them readable.
2. Want feedback to the agency and the industry. Trust between owners and the department so people are willing to move forward.
3. Keep all dry cleaners in mind.
4. Control costs of the program. Better utilize funds. Cleanup sites. Make businesses more valuable so they can stay in the industry.
5. Make sure technical people (supplies, equipment, consultants) share new technologies - for evaluation.
6. Accomplish goals under the laws of the state and the available money.
7. Long-term goal: Evaluate program every 5 years. Recommend whether to extend the program or not.

Steve Plater commented that there is not enough information to determine cleanup costs. We must find a way to add money to this program. The consumer will end up paying for the cleanup as a tax. The consumer has saved money because we haven't had to implement these cleanup changes. Now that we have to, the consumer takes up the cost.

Jeanne Tarvin suggested that there may be issues that members of the Council want to discuss in more detail and ad-hoc groups may be one mechanism for those efforts.

Four main categories of interest of the Council are summarized below.

- Funding sources
- Education
- Tracking systems
- Interaction with NR700

Luncheon Discussion with Duane Klein, DATCP, Agricultural Chemical Cleanup Program

Duane provided a brief overview of the Ag Chem Cleanup Program including:

- Rules in effect since 1994, currently finished revisions to simplify the program
- Structure of program: can't submit claims more frequently than every 12 months
- Eliminating milestones. Encourage cases to proceed toward close-out.
- Program funded through (1) fees from pesticide and fertilizer manufacturing (surcharges) and (2) GPR dollars (tax dollars)
- Program follows NR 700 for cleanup
- If have costs older than 3 years, cannot submit for a reimbursement
- There is a cap of \$400,000 per discharge site

Robin reported on the fees collected to date:

Estimated collection for FY 98: \$500,000	Actual collected for FY 98: \$441,000
inventory fee: \$10,000	inventory fee: \$125,000
license fee: \$300,000	license fee: \$230,000
solvent fee: \$250,000	solvent fee: \$86,000

Robin distributed a draft of the rules put together to date, and noted that these were very draft and some of the ag information was included in them for the purpose of starting discussion on their applicability to the DERP program.

There was discussion of the definition of facility and how the definition would apply to closed facilities and sites that had facilities located on them in the past. The next version of the rule will provide clearer language for the group to respond to. There was some concern that property that is not reimbursed will be hard to sell because no one wants to be stuck with cleanup charges if not going to be reimbursed. Robin said the group tried to reach a balance between limited amount of resources and people in need of money.

Robin reported that the rule contains additional information to define Preliminary Site Screening, and discussions with the Standards and Streamlining (SS) team. The group agreed that we may need to increase the reimbursement for these actions in the statutory fixes underway. The SS team expressed their concern that that people will put in interim actions for a specific site, but that won't identify the most significant problem from the site, which may be the product pooling in the groundwater, not the soil.

Kathy Curtner noted that she needed to look at some of the contents of the rule from a cash flow perspective to ensure the fund is well managed. The question arose as to whether we should include that reimbursement applications for interim actions should be submitted within 120 days, or if they should submit costs within 3 years (like Duane's).

In discussions on the pollution prevention part of the rule, the need to include a note saying that steel pans under the tank would meet the intent of the rule.

The questions was asked : Why delineate what's eligible and what's not ? Jeanne responded that PECFA had lots of problems with eligible costs.

Jim Fitzgerald commented that under Denial of Applications - If one of my contractors is fixing a dry cleaning machine and creates a spill, am I responsible? I won't be able to fix the dry cleaning machine because I will be held responsible. Edwina responded that the statute is saying that the owners have to go after the contractor because they can't be reimbursed. This will force owners to sue contractors. Look at insurance to be sure the contractor is covered for environmental liabilities. This approach is consistent with the current spill law which also allows for the owners and operators to require the person who causes the discharge to take action to clean it up.

Robin commented that the rule will not allow double-dipping. An owner or operator won't be reimbursed if insurance already covers the spill, or if someone else causes the spill, such as the case identified above.

There was discussion regarding the distribution of payments. Several items were highlighted.

- Need statutory change to pay future costs concurrent with past costs
- At the end of the year, we should take the money left from immediate action and interim actions and disburse it to cover cleanup actions.
- The group clarified that within the past costs category, there needs to be language specifying how monies will be distributed - don't want only one person to get all the money - spread it out so all get a proportion of the monies in that pot.

With respect to the frequency of application submittals, the group discussed that the 12 month minimum frequency may not work for dry cleaners. Donna Griesemer commented that getting reimbursed once per year is not enough for small dry cleaners. They should be reimbursed quarterly. Bob commented that we are not concerned about multiple reimbursements, rather about invoices; we want them submitted and paid only once. If the vendor is late, it goes on the next invoice. Reimburse only what's paid for because need canceled checks.

Kathy expressed some concerns regarding cash flow. She will talk with other programs at the DNR to see if they have recommendations based on lessons learned from them. For example, what if the money runs out in March? If someone files late, there will be no money left.

Joe Phillips questioned the situation of a dry cleaner has contaminated the groundwater and applied for reimbursement, then the contractor makes a spill and makes the situation worse. What happens? Mark Putra responded that the burden is on us to disqualify the reimbursement. It is difficult to deny an application.

Robin asked the group to review the sections on contract services and bidding requirements before the next meeting. At that time we would like to review these provisions to see what would work for the dry cleaners and the level of DNR staff available for reviewing these contracts.

Joe Phillips asked what the timetable is for statutory changes? Robin replied that the DNR statutory changes are due at the end of the summer, and she would like to get the rule language worked out first. The final draft should be done by July and Aug. Then work on statutory language changes. She also explained that the agency will likely recommend changes that have the support of industry. AT this time the DNR wouldn't put forth statutory changes without support of the industry. Kathy Curtner specified that statutory changes without a fiscal impact have different timing; non-budget changes are due by September 1. Budget changes are due by July or Aug. 1.

Joe Phillips asked whether the DNR would include the issue of expanding the definition of license fees to all dry cleaning services, and Robin replied that that would not be included with the package. The agency has stated that we will remain neutral on that issue.

The Council discussed that they would like to be part of the rule-making advisory group, and will plan on attending the next meeting. Robin will send out the agenda for the meeting. The focus will be on bidding and contracting. The Council members expressed concern that they still weren't sure of their purpose, but felt that participating on the rule-drafting initially will help them clarify that in the future.