

**Summary of Governor's Council for the
Dry Cleaner Environmental Response Fund Program
February 7, 2003
Lapham Peak State Park**

Participants:

Council members: Steve Plater (chair); Jeanne Tarvin; Jill Fitzgerald; Jim Fitzgerald; Richard Klinke; Jim Cherwinka

Other Participants: Brian Swingle (WFI); Don Gallo (Reinhart Law); Tim Whitcher (DOR); Robin Schmidt, Jeff Soellner (DNR)

1. Robin Schmidt updated the group with the statutory changes that have been included in the Agency's budget request, and indicated that it was still unclear whether these statutory changes would remain in the budget or would be taken out as policy items. Since they relate to the fund, Robin was optimistic that they may remain in the budget process. She will let the Council know when she hears about their status. The Council is very concerned that these changes be made, since they affect the longevity of the program and ultimately the number of drycleaners who may be helped by the fund. Tim Whitcher indicated that the DOR items had already been taken out of their agency budget request, and there was a meeting planned for 1:00 on Monday to talk with the DOR and their legislative liaison on packaging these changes and getting them into a separate bill at the legislature. There was a discussion that we should be dual tracking these statutory changes with DOR. Robin also indicated that the statutory change relating to the transfer of money from the DERF fund to the Environmental Fund when Environmental Fund monies are used should exclude the deductible, so that the Environmental Fund gets reimbursed for all costs minus the deductible. The Environmental Fund would be responsible for the deductible costs. The Council agreed to that change.
2. Don Gallo raised the issue of vapor intrusion from shallow groundwater contaminated with drycleaner solvents. He discussed the site he is involved with where there could be up to 35 homes potentially affected. The consultant and the DNR are working with the Department of Health and Family Services staff on determining the scope and extent of the problem. They agreed that the measures they are taking are precautionary in nature, and not indicative of a problem at this time. Because the issue of vapor intrusion is so new and options for addressing these concerns are also new, they don't want to raise concerns unnecessarily. Some of the concerns include that in-home monitoring often identifies a number of substances that are found in household chemicals that are stored in homes (i.e. drano, paint remover, oil based paints, etc.). In addition, the analytical cost of monitoring air is high, and the number of labs that analyze air is minimal. At the site Mr. Gallo is involved with, they are monitoring at points outside of homes to determine whether vapor concentrations would be indicative of a problem and will proceed from there. The group discussed how this would impact the fund, the value of homes, the ability of people selling their homes, etc. This has the potential to be a major issue if intrusion is indeed found to be a problem at a particular site. The group also discussed the standards being used by the DHFS staff (apparently 1 ppb) and the OSHA standard of 100 ppm. The group was concerned that DHFS was using an unreasonable number. Robin indicated that the OSHA standards are based on different assumptions (8 hour exposure vs 24 hour, and adult vs children). She also indicated that she was meeting with DHFS staff to discuss this issue on Feb. 18th. The Council agreed that there should also be a meeting between the drycleaning industry, Council reps, DNR and DHFS to further discuss this at the end of February, early March. Robin agreed to set up such a meeting in Madison near the end of February. Jeanne Tarvin, Don Gallo, Brian Swingle, and Steve Plater would be involved in that meeting. Brian Swingle agreed to do follow up on health standards with the International Fabricare Institute (IFI) to see what information they have on this topic.
3. Don Gallo raised the issue of timing for DNR staff to review bid proposals. There is nothing specified in the rule about this, but most DNR regions are able to provide this review within 45 days. One particular site Don mentioned was beyond that. [Upon further follow-up, there was a delay for that site in identifying site specific cleanup numbers on the property due to a DNR staff person family emergency, but since that time, numbers have been calculated. DNR is now awaiting supplemental

information from the low-bidder (requested on 1/29/03). DNR worked out this approach in order to expedite the ability to conduct remedial actions this year.

4. Robin Schmidt updated the Council on the status of ch. NR 169, Wis. Admin. Code – indicating that it was sent over to the Legislature for their review on 1/29/03, and could be effective as early as 5/1/03. She has a fact sheet summarizing the rule, and has updated other existing fact sheets based on rule changes, and those should be available on the web in the near future. She will try to have the rule fact sheet available for the WFI convention on the 15th.
5. Tim Whitcher gave a summary of the Department of Revenue (DOR) efforts to collect fees from drycleaners. DOR estimated that 355 licenses were issued in 2001, and they assumed that number could also be issued in 2002. However, only 257 drycleaners submitted the appropriate forms and were officially licensed in 2002. DOR then sent out 98 penalty letters to businesses they estimated should have renewed their licenses. Of those 98, 45 responded by filing an appeal with the Dept. of Revenue. They have not had the staff to do additional follow up on the remaining 53 facilities. Some may not be in business, etc. In addition, Tim indicated that they can provide the Department of Commerce with the current list of licensed drycleaners, and apparently the Department of Commerce is able to release that list to WFI. Tim indicated that they are not funded for enforcement or inspections, so those activities are done without funding. WFI indicated that they are willing to work with DOR if they could help with any related activities (understanding the confidentiality issues with DOR).
6. Jeff Soellner presented information on the status of the fund, showing that in the near future demands will exceed the funds. Industry is very concerned that funds for this program will be taken to alleviate the state deficit. This has not occurred to date, but the budget for the next biennium is not yet out. WFI will need to be proactive on alerting key legislators as to the success of this program, and the implications of “raiding” this fund. Industry is concerned that compliance with licensing will decrease if the drycleaners think these funds are not going to their cleanup projects. Jeff summarized that there are 80 sites in the program now, and we anticipate at least 15 more sites per year, until 2008, the deadline for submitting notification for getting into the program (under proposed statutory language). The group discussed that current statutory language is more restrictive than this – and that there is no certainty that these changes will be made. The Council suggested that DNR revise the numbers to reflect less conservative estimates, so that a more realistic picture is represented on the graphs. Jeff and Robin will work on putting this together in the near future.
7. The Council also discussed the need to better publicize the program. They suggested that when the program was initially developed they estimated that there would be about 300 sites in the program. We are seeing less than that come forward at this time. The DNR is reaching out to WFI members through Impressions and the WFI convention to publicize the program, but DNR suggested that additional outreach is needed to property owners as well as all licensed drycleaners, especially in light of the upcoming deadlines. DNR indicated a concern that property owners may not be aware of the program, and if the program ends as anticipated, they are the ones that will carry the liability forward, along with the drycleaners. The Council is concerned that if property owners are targeted for outreach, they may become concerned about the risks of having drycleaners on their property and not renew their leases. The Council was also concerned about funding implications if a large number of sites come into the program at one time. They had a brief discussion regarding the statutory change which delays the ending of the program until 2008, and whether that should be extended even further. DNR staff indicated that they wanted to see this as an end date, so that the universe of sites is known and the funding needs of the program can be determined. Since there is so much short term uncertainty with the program in the current and near future budget, the Council decided to end this discussion until we know the fate of the DERF funding. The Council requested that until we see the next biennial budget, the DNR wait to move forward with additional outreach. DNR agreed to hold back until we see what happens.
8. The Council agreed to a follow up meeting once the budget package is introduced to determine whether additional work is needed on the part of the industry for keeping the fund whole. WFI

representatives and the Council agreed to talk with legislators who are familiar with the program to highlight the concerns over the funds and the statutory changes that are pending in DOR and DNR agency budget requests.