

**Dry Cleaners Rule-making Advisory Group**  
**5/20/98 Meeting Minutes**

**Attendees:** Robin Schmidt, Mark Putra, Jo Mercurio - WDNR; Don Gallo, Joe Phillips - Wisconsin Fabricare Institute; Jeanne Tarvin - STS; John Robinson - WI Water Well Assn.  
**Others Present:** Catherine Sanders - AERC; Kendra Bonderud - Leg Fiscal Bureau; Sally Kefer - DNR (Facilitator)

Robin reviewed the agenda, and discussed the objectives for the meeting. We began with a broad discussion of the assumptions by which the rules were being developed (i.e. cost containment, fairness to dry cleaners, etc). We also discussed the parallel process of identifying items for statutory changes for the 1999 - 2001 biennial budget. Joe Phillips asked whether we were going to include a request to change the definition of what the 1.8% gross receipts would be based on (i.e. all services provided by a dry cleaning facility or only the receipts for dry cleaning activities). Robin indicated that in past discussions with administration, the department was going to continue to remain neutral on that issue. If the industry wanted to pursue that through legislative changes, the department would keep a neutral stance on that topic.

We discussed the overall concern that there was not going to be enough money in the fund to reimburse site investigations/remedial actions for at least 5 years (per industry estimates) due to the statutory requirement to reimburse past cleanup costs first. The discussion also led to a more philosophical discussion about whether our approach is to administer the fund or manage the fund. John Robinson suggested that we should look at that up front, before designing the program. If we are to simply *administer* the fund, then we don't need to build in considerations of cost containment/cost controls/review of costs/etc. However, if we want to set this up so that we are going to *manage* the fund, we want to consider other options. After discussion, the group considered that management of the fund was important, however, there was concern over the level of management and the workload that would be associated with management of the fund. The group thought that this would be an issue to raise to the Governor's Advisory Council for their input and consideration as perhaps a function they could provide to the program.

Under the topic of cost controls, the group also discussed the role of the dry cleaning facility owner/operator in trying to maintain cost controls. Mark Putra indicated that in general, projects that have the active participation and interest of the owner are those that tend to be better managed projects. Site owners and operators need to be better educated on what to look for in selecting a consultant, how to manage a project, what to consider in evaluating proposals, etc. Joe Phillips indicated that was a role that the Fabricare Institute can assist with, and has already worked on.

More detailed discussions focused on the fact that we **do** want to include requirements in the rule for some type of qualification/competitive bidding process. The group felt that this type of system - requiring at least two bids and then performing a qualification review on the bids would help create competition and keep costs down. The group also discussed that DNR should require cost information with the workplan and Remedial Options Plan submittals on a standardized form (potentially electronic) for the DNR for review and track. We discussed that the project manager **would not** be reviewing costs to determine whether, for example, \$60.00/foot for drilling in hardpan was reasonable, but would be looking for things that were grossly unnecessary/unreasonable. The group also believed that making this information a requirement would help the dry cleaner know what the real costs are and be better able to manage the

consultant. We also discussed the workload implications of tracking this information, and Robin indicated that she would follow up with Community Financial Assistance and get their perspective on their role in terms of grant management.

We then discussed the issue of what the fund will pay for when a variety of remedial options are available at different costs. Some would result in closure, but may require a deed restriction, others would result in a faster cleanup, but cost significantly more. After much discussion, the group agreed that the fund should pay for the lowest cost alternative to achieve closure per the NR 700 process. That does not mean the site owner has to select the lowest bid, just select the remedy that will be most cost effective to achieve the end result of compliance with NR 700. If a site owner wants to take an action that will reach the same end point but is higher cost, the fund would only reimburse the equivalent of the lower cost approach. With respect to dealing with uncertainty or changing conditions, the group felt as a whole, those could be accommodated through change orders and other mechanisms that document changed conditions.

After lunch, the group focused on priority of reimbursements assuming that there would be a backlog of sites for which reimbursement would be immediately available. We discussed the system that the ad-hoc team devised and discussed the pros and cons of various alternatives. The group decided that they liked the general categories of “imminent risk”, “significant risk”, and “risk”, but needed further interpretations of what would fall into these categories. The group also looked at defining what conditions would need to be met to fit into a category for reimbursement, but came back to the concept of providing general guidelines on the categories and letting the staff determine which category the site was placed into. While there is some level of concern about consistency and ability to appeal the category a site is placed into, the group was fairly comfortable with this approach.

Through a minimal brainstorming effort, the group identified the following modifiers for the three categories:

Imminent Risk	Significant Risk	Risk
exposure above any health or environmental standard	affected water supply	non-potable groundwater affected
high concentration soils/expanding plume	impact to a wetland/surface water	expanding plume
public/potable wells contaminated	groundwater contaminated, potable wells threatened	soil contamination w/o threat to groundwater
fractured bedrock	surface water downgradient	all other sites
shallow cased municipal well	fractured bedrock	
contaminant within 1 meter of bedrock	RCL exceedance/direct contact	
free phase product in groundwater/DNAPLs	high priority factors per PECFA	

Robin agreed to try to work with these and put them into rule language for review and comment by the group.

The question was asked whether there was a cash flow analyses done by the Fiscal Bureau to address the backlog created by the reimbursement of cleanup costs from 1991 to 1997. Kendra responded that such an analyses had not been done. Such an effort may be helpful to better define how long it will take to get to a Category A site.

The group also discussed the Category D sites as defined by the ad-hoc team. Costs such as long term monitoring, and operation and maintenance beyond 3 years would be suitable for that category. The group cautioned, however, that we need to be very careful not to influence remedies by delaying cost reimbursement. The group will also think up potential ways this could influence remedies, and we will further discuss that at the next meeting.

Robin indicated that the rule language developed to date had been distributed to the group, and was in very draft form. Due to time constraints, group members are encouraged to send Robin their comments on the rule language for her to review and incorporate, as appropriate. John Robinson indicated that he was uncomfortable with the dispute language and will pursue his comments with Robin in the future.

The group set aside June 2<sup>nd</sup> for their next meeting date, and also is setting aside several hours on June 11<sup>th</sup> for a potential conference call to further discuss issues. The Governor's Advisory Council meets June 16<sup>th</sup> in Madison, as does the rule-making advisory group.